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✓  
A MANUAL  
FOR  
POLICEMEN  
CONSTABLES, MARSHALS  
AND  
OTHER MINISTERIAL OFFICERS

IN OHIO

WITH PRACTICAL INSTRUCTIONS AND FORMS

✓  
BY

✓  
FLORIEN GIAUQUE, A.M., LL.D.

Editor of "The Revised Statutes of Ohio;" Author of "Settlement of  
Decedent's Estates," "A Manual for Guardians  
and Trustees," etc.

✓  
SIXTH EDITION. ✓

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THE W. H. ANDERSON COMPANY  
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## PUBLISHERS' STATEMENT.

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This book, and its price, should be judged, not by its size, but by its contents. It has been made small by using small, but clear type, by arranging it compactly, by using thin, but good paper, and by leaving narrow margins, so that the book may be easily carried in the pocket. It could easily be arranged to make it twice as bulky, without adding one word to its contents. Judged by the amount of matter in it, it is one of the cheapest law books published.





## PREFACE.

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Very many more law-suits, involving the rights of property, the liberty or imprisonment of the individual, the good order of the community, and the preservation of the public peace, are tried and finally decided in magistrate's courts than in all others combined. Far more frequently than any others, the ministerial officers of magistrates' courts—their constables, marshals, policemen, watchmen, deputies, etc.—must arrest and thrust into prison, both the citizen and the stranger; and must seize and sell, or otherwise interfere with, some or all of their property. In many cases these arrests must be made on such officer's own judgment, without the shadow of a command from any other officer. In other cases, he can act only when a writ, proper in form, is issued to him by an officer having jurisdiction over the matter, at the time and in the place of its occurrence. He must know, at his peril, whom, when and how to arrest, and what for; what and whose property he may seize, and when and where; and when and where he must also, at his peril, refrain.

How important, then, that each such officer should have at hand, in convenient form, the means of knowing, not only in a general way, but of learning at any particular time or place, just what are his duties, powers, rights, etc., and how he must proceed, so that he may fully do his duty as an officer, without violating the rights of others, and subjecting himself to the penalties imposed on him when he acts outside the limits of his powers!

To furnish a pocket guide that would meet, as nearly as possible, the requirements indicated above, containing within itself, so arranged as to be quickly found, the law, the forms, and instructions that such officer needs to enable him to act intelligently on any occasion, has been the writer's object in preparing this book.

FLORIEN GIAUQUE.



## PREFACE TO THE FOURTH EDITION.

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This edition contains all modifications required by the legislation found in Volumes 88 to 92, inclusive, of Ohio Laws, and notes of pertinent Ohio decisions reported to the date hereof, including 54 Ohio State Reports, as well as of our lower courts published to the same time. It also contains additional provisions more especially adapting it to the needs of police courts and their officers in cities and vilages. The other principal legislative changes are found in chapter 32, relating to crimes and offenses.

It may be of some interest to the buyer and user of this book that, although it has had a large sale to lawyers and officers, and many complimentary things have been said about it, not one suggestion of change and not one complaint has been received or heard of by the writer; and that, although it has all been re-read with a view to making such other changes in the text as might seem advisable after the lapse of about seven years, not one word of it has been changed except to comply with said new laws and decisions. Even these changes are few, except in chapter 32.

FLORIEN GIAUQUE.

CINCINNATI, *October*, 1897.

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## PREFACE TO THE FIFTH EDITION.

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The fifth edition of this work conforms it to the living legislation in Volumes 94 Ohio Laws and earlier, and to the decisions in Volumes 62 Ohio State Reports and earlier, and, as far as deemed advisable, to the decisions of our lower courts published to this date.

FLORIEN GIAUQUE.

CINCINNATI, *April*, 1901.





## PREFACE TO SIXTH EDITION.

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Since the Fifth Edition of this work was issued, the entire statute law of Ohio has been re-codified—many of the statutes changed, many others enacted and some repealed. Numerous things, not formerly considered offenses, have now been declared to be such. The constitution of Ohio has been materially amended and many decisions of our courts have been rendered and published. For these reasons the need of this Sixth Edition is apparent. It has been made to conform to the General Code of Ohio of 1910 and to the laws passed since the General Code's adoption and all decisions have been brought down to date of publication.

The Author is indebted for the making of this revision to W. S. Walker, of the Cincinnati Bar, who has done similar work on other books, and is himself an author of one of the most useful books in law literature—"Walker's American Law of Real Estate Agency."

FLORIEN GIAUQUE.

CINCINNATI, Ohio, January 22, 1914.



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# MANUAL

FOR

## CONSTABLES, MARSHALS, ETC.

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### CHAPTER 1.

#### ELECTION, APPOINTMENT, OATH, BOND, ETC., OF CONSTABLE AND MARSHAL.

[All sectional references are to the General Code of Ohio  
of 1910.]

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#### OF CONSTABLES.

1. *Number of, and how determined.* The township trustees determine how many constables must be elected in each township.<sup>1</sup> (As to constables in towns, see paragraph 45, below.)

2. *Election and term of office of.* Constables are elected biannually for a turn of two years, commencing on the first day of January next after their election, and continue in office<sup>2</sup> until their successors are elected, or appointed, and qualified.

3. *Who may be elected.* No person can be elected or appointed to an office in this state who is not an elector;<sup>3</sup> and as only male citizens over twenty-one years of age who have lived in the state one year, and in the county, township or ward, such time as the law provides, can be electors;<sup>4</sup> none but such persons can be elected or appointed as constable, marshal, policeman, or other officer.

<sup>1</sup> § (3327).

<sup>2</sup> § 3268, Constitution of Ohio, Art. X., paragraph 4.. *State v. Ward*, 17 O. S. 544.

"Where the corporate limits of a city or village become identical with that of the township, township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances, providing offices regulating the disposition of their fees, their compensation, clerk and other officers and employes. Such justice and constable shall be elected at municipal elections. All property, moneys, credit, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interest or claim in favor of or against the township may be enforced by or against the corporation." § 3512.

<sup>3</sup> Ohio Constitution, Art. XV., § 4.

<sup>4</sup> Ohio Constitution, Art. V., § 1; United States Constitution, XIV. and XV. amendments.

4. *Oath of office; notice of election.* Each person chosen or appointed to an office under the constitution or laws of this state, must take an oath of office.<sup>1</sup> The township clerk must, within ten days after the election or appointment of the constable, notify him thereof and require him to appear before such clerk or other officer authorized by law to administer oaths, and take the required oath of office, and give bond, within ten days after such election or appointment.<sup>2</sup>

5. *Township clerk should administer oath of office.* It is best to take this oath before the clerk, as it must be recorded by him, no matter who administers it. If administered by some other officer, he is required by law to make a certificate of the oath to such clerk, who must then record the oath.<sup>3</sup> But this is more troublesome, is liable to be more expensive, and to be in part neglected, if not done before the clerk himself.

6. *Vacancy, how filled.* Whenever a vacancy occurs in the office of constable, in any township, by death, removal, resignation, or non-acceptance of the person elected, or when there is a failure to elect, or when there is a vacancy from any other cause, the township trustees must appoint a suitable person to fill such vacancy until the next annual election for constable, and until a successor be elected and qualified. The constable so appointed must take a like oath and give a like undertaking, as is required in other cases of constables.<sup>4</sup>

7. *Failure to take oath or give bond, vacates office.* A constable, and any other township officer, who, for ten days after receiving notice of his election or appointment, fails to take the oath of office, or, if bond is required, fails to give bond, will be deemed to have declined to accept, and the vacancy will be filled as in other cases.<sup>5</sup>

8. *Penalty for refusing to serve, how collected.* A person elected or appointed constable, who neglects or refuses to serve, must forfeit and pay to and for the use of his township the sum of two dollars, to be recovered by an action before a justice of the peace of said township; and the township clerk must, in the name of such township, collect

<sup>1</sup> §§ 2, 3, 3263, 3331; also Constitution of Ohio, Art. XV., § 7, and paragraph 6 below.

Each person chosen or appointed to an office under the constitution or laws of the state, and each deputy or clerk of such officer, shall, before entering upon the discharge of his duties, take an oath of office; but the failure to take such oath does not affect his liability or the liability of his sureties, § 2.

The word oath includes affirmation: and, whenever an oath is required or authorized by law, an affirmation, in lieu thereof, may be taken by any person having conscientious scruples to taking an oath; and an affirmation has the same force and effect as an oath. § 1.

<sup>2</sup> § 3263.

<sup>3</sup> §§ 2, 5, 3263, 3264.

<sup>4</sup> §§ 3261 (87 v. 119), 3329, 3330.

<sup>5</sup> § 3265.

this money, by suit, if necessary, and pay it over, when collected, to the township treasurer; but no person can be compelled to serve as constable two years in succession.<sup>1</sup>

9. *Bond, requisites of, deposit of.* Before entering upon the discharge of his duties, each constable must give bond to the state in a sum not exceeding two thousand dollars, nor less than five hundred dollars, with sureties resident of the township, the amount of the bond and the sureties therein to be approved by the trustees, conditioned for the faithful and diligent discharge of his duties. This bond must be deposited with the township clerk.<sup>2</sup>

10-15. *Form of constable's bond and oath:*

Know all men by these presents: That we, A. B., as principal, and C. D. and E. F., as sureties, are held and firmly bound unto the State of Ohio, in the sum of — dollars, to be paid to the state aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed by us this — day of —, A. D. 19—.

The condition of the above obligation is such, that, whereas, the said A. B. has been duly elected and qualified as constable of — township, — county, and State of Ohio, for the term of two years from the — day of April, A. D. 19—, and until his successor is elected, or appointed and qualified.

Now, if the said A. B. shall faithfully and diligently discharge his duties as said constable, then this obligation will be void; otherwise it will be and remain in full force and effect.

A. B.  
C. D.  
E. F.

The sureties on the above bond, and its amount, approved by us:

G. H.,  
I. K., } Trustees of said Township.  
L. M., }

16-19. The State of Ohio,  
— County, — Township. } ss.

Before me, N. O., clerk of said township, personally came A. B., who being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as constable of — township, — county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

A. B.

Sworn to before me and signed in my presence, on this — day of —, A. D. 19—. N. O., Township Clerk.

— <sup>1</sup> § 3267.

<sup>2</sup> § 3328.

20. *Bond must be recorded and filed.* As soon as the trustees approve such bond, it must, together with the constable's oath, be first recorded by the township clerk in a book kept for that purpose, and then filed by the clerk in his office.<sup>1</sup> As the bond and oath must each be recorded in the same book,<sup>2</sup> it is convenient and customary to have both of them on the same paper.

21. *Clerk's fees as to bond.* The clerk is entitled to a fee of fifty cents from the constable for recording such bond, and the same fee from each person demanding a copy of it.<sup>3</sup>

### OF MARSHALS.

22. *Election and appointment of marshals.* Marshal shall be elected for a term of two years, commencing on the first day of January next after their election, and shall serve until their successors are elected and qualified; and provision is made by the laws for filling vacancies that may occur, either by appointment by the mayor, or by special election to be held for that purpose.<sup>4</sup>

24. *Bond.* The marshal of a village or city must give a bond to his corporation before entering on the duties of his office, to be approved by the mayor, and in such sum as the council may require; new or additional bond may also be required by the council at its discretion. Each of these bonds must be deposited with the clerk of the corporation, and be recorded, filed away and preserved by him.<sup>5</sup>

25. *Oath of office.* Each marshal, whether elected or appointed, must, before entering on the discharge of his du-

<sup>1</sup> §§ 3305, 3302.

<sup>2</sup> § 3302.

<sup>3</sup> § 3307. A copy of such recorded bond, certified by such clerk, must be admitted in any court in this state, as evidence, the same as the original bond. § 3306.

<sup>4</sup> § 4384. It is necessary that a certificate be filed showing that there is money in the treasury sufficient to pay the salaries of deputy marshals and the like before such marshals are appointed. *Urige v. Reading*, 8 N. P. 573, 11 O. D. (N.P.) 704.

As to vacancy occurring in consequence of neglect or refusal to give bond or take the required oath of office, see §§ 4242-4245. As to removal for improper conduct, etc., see §§ 4670-4675. The length of these provisions makes it inconsistent with the plan of this book to give them or their substance in full.

<sup>5</sup> §§ 4667, 4668, 4669.



ties, take an oath to support the constitution of the United States, the constitution of Ohio, and that he will faithfully, honestly and impartially discharge the duties of the office.<sup>1</sup>

26-30. *Form of marshal's bond and oath:*

Know all men by these presents: That we, A. B., as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the village (or city) of —, in — county and State of Ohio, in the sum of five hundred dollars, to be paid to the village (or city) aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed by us this — day of — A. D. 19—.

The condition of the above obligation is such, that, whereas, the said A. B. has been duly elected and qualified as marshal of said village (or city) of — in — county and State of Ohio, for the term of two years from the — day of April, A. D. 19—, and until his successor is qualified.

Now, if the said A. B. shall faithfully perform the duties of the office of marshal of said village (or city) during his continuance in said office for said term, then this obligation will be void; otherwise it will be and remain in full force and effect.

A. B.  
C. D.  
E. F.

The above bond is approved by me:

G. H., Mayor of said village (or city).

[SEAL.]

31-34. The State of Ohio, } ss.  
— County.

Before me, I. K., a notary public in and for — county, Ohio (or other officer as may be), personally came A. B., who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully, honestly, and impartially discharge his duties as marshal of the village (or city) of —, in — county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

A. B.

Sworn to before me and signed in my presence, on this — day of —, A. D. 19—.

[SEAL.]<sup>2</sup>

I. K., Notary Public as aforesaid.

35. *Bond must be filed and recorded.* The marshal's bond must be filed with the clerk of the corporation, and must be recorded by the clerk in the book kept for the record of the municipal officers.<sup>3</sup>

<sup>1</sup> § 4666. See also pars. 3 and 4 above, and notes to same.

<sup>2</sup> See par. 4 of Chap. 3.

<sup>3</sup> §§ 5, 4669.

## OF SPECIAL CONSTABLES.

36. *When and how justice may appoint.* A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, whenever such appointment may become necessary, in the following cases: *First.* Where there is no constable in the township: *Second.* In the case of disability of one of the regular constables in the township: *Third.* Where the constable therein is a party to the suit: *Fourth.* When, from the pressure of official business, the constables therein are not enabled to perform the duties required by the office.<sup>1</sup>

37. *Record of appointment, and oath of special constable.* The justice must make a memorandum of the appointment on his docket, and must require the person appointed to take an oath, as required in paragraph 4 of chapter 1.<sup>1</sup>

38. *Special constable for fairs, etc.* On the application of a state, county, township or independent agricultural society, or industrial association, or other association, or meeting of citizens for the purpose of promoting social or literary intercourse, a justice of the peace may appoint a suitable number of special constables to assist in keeping the peace during the time when such society or assembly is holding its annual fair or meeting.<sup>2</sup>

39. *Special constables for freeholders.* A justice of the peace, within the state, upon the written application of any three freeholders of a township thereof, may appoint one or more special constables within such township, who must watch and guard the property of said freeholders, and protect it from all unlawful acts; and in the discharge of their duty they have authority to make arrests.<sup>3</sup>

40. *Record, compensation, etc.* The justice making such appointment must make a memorandum thereof upon his docket; and it will continue in force for one year, unless sooner revoked by him. The constables appointed by virtue of this and the preceding paragraph, must be paid in full for their services by the freeholders for whose benefit they are appointed, and can receive no compensation except from said freeholders.<sup>4</sup>

41. *In Lake Erie islands.* When, in the opinion of a justice of the peace in any township situated on and consisting in whole or in part of one or more islands in any lake in this state, or in township adjoining or abutting any lands or premises belonging to any state or national home for disabled volunteer soldiers in this state, or in any township adjoining or abutting any lands or premises belonging to any disabled volunteer soldiers' home in this state, the constables of his township are insufficient to maintain the peace

<sup>1</sup> § 3331.<sup>2</sup> § 9912.<sup>3</sup> § 1738.<sup>4</sup> § 1739.

and duly enforce the laws for the preservation of order therein, he may appoint any number of special constables, not exceeding ten, who will be conservators of the peace within such township, and have the same powers as are conferred by law upon constables in criminal causes; he must make a memorandum of such appointment upon his docket, and it will continue in force for one year unless revoked by him; such special constables are to receive the same fees as are paid by law for similar services to regular constables in other cases.<sup>1</sup>

42. *Court constables, duties and compensation.* When, in the opinion of the court, the business thereof so requires, each court of common pleas, circuit (appellate) court, superior court, insolvency court, in each county of the state, and in counties having at the last or any future federal census more than seventy thousand inhabitants, the probate court may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two common pleas judges regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable shall have the same powers as sheriffs to call and impanel jurors, except in capital cases. Each constable shall receive the compensation fixed by the judge or judges of the court making the appointment. In counties where four or more judges regularly hold court, such compensation shall not exceed twelve hundred and fifty dollars each year, in counties where more than one judge and not more than three judges hold court at the same time, not to exceed one thousand dollars each year, and in counties where one judge holds court, two and one-half dollars each day, and shall be paid monthly from the county treasury on the order of the court. Such court constable, when placed by the court in charge of the assignment of cases, may be allowed further compensation not to exceed one thousand dollars as the court by its order entered on the journal determines.<sup>2</sup>

#### OF POLICEMEN, WATCHMEN, ETC.

43. *In the large cities.* There are separate laws concerning the appointment, bond, etc., of police officers, watchmen, etc., for each large city in the state;<sup>3</sup> but these laws are so long, and are so often changed, to meet the supposed changing needs of such cities, or for other reasons, that it is not expedient to give them here. They may be found within the General Code of Ohio.

<sup>1</sup> § 13428 (90 v. 128).

<sup>2</sup> §§ 1622, 1623.

<sup>3</sup> That is, Cincinnati, Cleveland, Columbus, Toledo, Dayton, also Canton, Hamilton, Youngstown, Portsmouth, Akron, Lorain.

45. *Appointment of constables and other officers.* Municipalities are authorized to adopt any one of three forms, by general vote, the manner in which their respective municipalities are to be governed, and under these provisions constables and other officers are appointed.<sup>1</sup>

46. The night watchmen and police must, before entering upon their duties, give bond, with good and sufficient surety to the satisfaction of the mayor, for the faithful performance of their duties.<sup>2</sup>

47. In cities provisions are made for the appointment of subordinate officers of police and night watchmen under the rules of the civil service commission, after undergoing competitive examinations.<sup>3</sup> To prevent the stoppage of public business, or to meet extraordinary emergencies, the mayor may make temporary appointments.<sup>4</sup>

<sup>1</sup> 103 O. L. 767.

<sup>2</sup> §§ 4667, 4669.

§§ 4479, 4481. *State v. Lee*, 10 N. P. (N.S.), 364, 365, 20 L. D. 569; *affd. w. o.* 83 O. S. 518.

<sup>4</sup> § 4488.



## CHAPTER 2.

JURISDICTION OF MAGISTRATES AS AFFECTING  
CONSTABLES, MARSHALS, POLICE OFFICERS, ETC.

1. Constables, marshals, policemen, and other ministerial officers<sup>1</sup> must take notice, at their great peril in many cases, that the writs they serve, especially those depriving a person of his property, and more especially those depriving him of his liberty, are issued to them by a judicial officer<sup>1</sup> who has jurisdiction of the subject-matter of the writ.<sup>2</sup> It is, therefore, important for them to know *who* may command them to execute writs, and also *what* writs may properly be issued to them. For this reason, it is necessary to state sufficiently for the purposes above, the jurisdiction of justices of the peace, mayors, police judges, and certain other officers.

## OF JUSTICE OF THE PEACE.

2. *Their jurisdiction in civil cases* is limited to the township in which they have been elected and reside, unless otherwise directed by law.<sup>3</sup> It extends generally to suits in which the debt or damages do not exceed three hundred dollars.<sup>4</sup>

3. It extends throughout their county, to administer any oath or affirmation, to issue subpoena for witnesses and compel their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions; to try the action for the forcible entry and detention, or the detention only, of real property;<sup>5</sup> to proceed against security for costs and bail for the stay of execution on their dockets; to issue attachment and proceed against the goods and effects of debtors in certain cases;<sup>5</sup> to issue executions on judgments rendered by them; to proceed against constables failing to make return, making false return, or failing to pay over money collected on execution issued by such justice; to try the right of the

<sup>1</sup> For definition of, etc., see pars. 1 to 5, Chap. 3. The protection of the individual requires that the power given to a constable must be exercised in a reasonable and prudent manner. *Drolesbough v. Hill*, 51 O. S. 257, 264.

<sup>2</sup> See pars. 26-29, and notes thereto, Chap. 5.

<sup>3</sup> § 10223 (93 O. L. 146). They can not hold court outside of that Township. *Ib.*

<sup>4</sup> *McKibben v. Lester*, 9 O. S. 627; *Job v. Harlan*, 13 O. S. 485.

claimant to property taken in execution or on attachment.<sup>1</sup>

4. In actions founded upon an undertaking, given in pursuance of law in any civil proceeding pending before a justice, such justice, or his successor in office, has jurisdiction co-extensive with his county.<sup>2</sup>

5. No householder or freeholder resident of the county can be held to answer a summons issued against him by a justice, in a civil matter, in any township of such county other than the one where he resides, except in the cases stated above, and the following.

6. Where there is no justice of the peace for the township in which the defendant resides, or where the only justice residing therein is interested in the controversy, or where he is related, as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause in the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county.

7. Where the summons is accompanied with an order to attach property, the jurisdiction is co-extensive with the county, except in counties containing a city of the second grade of the first class, or of the first grade, second class, the jurisdiction is co-extensive only with the township for which the justice was elected, unless jurisdiction of the defendant is otherwise obtained, as provided elsewhere in paragraphs 5 to 9 in this chapter.

8. Where two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable for the same action, and reside in different townships of the same county, the plaintiff may commence his action before a justice of the township in which any of the persons liable reside; but in joint actions against the makers and indorsers of notes, due bills, or bills of exchange, the action must be commenced in the township claimed by the plaintiff that an indorser indorsed the note or bill at the time it was made; and the jurisdiction depends thereon, before the justice takes jurisdiction, the plaintiff, or some person for him, must file an affidavit setting forth the fact.

9. In cases of trespass to real or personal property, the action may be brought in the township where the trespass was committed, or in the township where the trespasser, or any one of several trespassers, resides.<sup>3</sup>

<sup>1</sup> § 10224. Also, to take the acknowledgment of deeds, mortgages, and other instruments of writing, to solemnize marriages, to act in the absence of the probate judge in the trial of contested elections of justices of the peace, and to try actions against other justices of the peace for refusing or neglecting to pay over moneys collected in their official capacity, where the amount claimed does not exceed one hundred dollars. *Ib.*

<sup>2</sup> § 10228.

<sup>3</sup> § 10225 (93 O. L. 147).

10. Justices have jurisdiction in actions for trespass on real estate where the damages demanded for such trespass do not exceed one hundred dollars.<sup>1</sup>

11. Suit may be brought against a railroad company before a justice in the township in which the president of the company resides, or in any township in which the railroad owned or leased by the company is located, whether the company be foreign or domestic. All special laws in charters prescribing the place of suing railroad companies, or the place or manner of service of process on them, are abrogated.<sup>2</sup>

12. Justices have no jurisdiction of any action: (1) To recover damages for an assault, or assault and battery; or, (2) In an action for malicious prosecution; or, (3) In actions against justices of the peace or other officers, for misconduct in office, except in the cases provided for in this chapter; or, (4) In actions for slander, verbal or written; or, (5) In actions on contracts for real estate; or, (6) In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except in cases provided for in paragraph 10 of this chapter.<sup>3</sup>

13. *Justice's jurisdiction in criminal matters.* Every justice of the peace is a conservator of the peace, and has jurisdiction in criminal cases throughout the county in which he is elected and where he resides, on view, or on sworn complaint, to cause every person charged with the commission of a felony or misdemeanor to be arrested and brought before him or some other justice, to inquire into the complaint, and either discharge the accused or bind him to appear before the proper court, or otherwise dispose of the complaint, as provided by law.<sup>4</sup> He is authorized to hear complaints of the peace and issue search warrants.<sup>4</sup>

14. See also the important provisions of par. 9, Chapter 34, and pars. 54, 55, of this chapter.

## OF MAYOR.

15. *Civil jurisdiction of.* The mayor of a municipal corporation has, within the limits of the corporation for which he is elected, all the jurisdiction of a justice of the peace. He has no civil jurisdiction outside of said limits.<sup>5</sup>

16. All laws relating to the procedure before justices, that is, as to how cases are to be tried, what writs may be issued, how served, etc., apply with equal force and effect to mayors.<sup>6</sup>

<sup>1</sup> § 10231 (SS v. 262).

<sup>2</sup> § 10239. This section also provides how service of summons must be made on such company. See par. 27, Chap. 6.

<sup>3</sup> § 10232. These matters are more fully discussed in Swan's Treatise, Chap. 2, § 3, than space will permit here.

<sup>4</sup> § 13422.

<sup>5</sup> § 4548.

<sup>6</sup> § 10491.



17. *Criminal jurisdiction of, generally.* The mayor is a conservator of the peace throughout his corporation, and has jurisdiction of criminal cases provided below.<sup>1</sup> A person appointed by council to act as mayor during a temporary vacancy or during the disability of the mayor, has all the powers of the mayor while so acting.<sup>2</sup> See also pars. 50-52 below.

18. *Same, in cities.* In cities, other than those which have a police court, the mayor has final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation, unless imprisonment is prescribed as part of the punishment.<sup>3</sup>

19. He has final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to a trial by jury; and his jurisdiction in such cases is co-extensive with the county.<sup>4</sup>

20. He has final jurisdiction in the cases mentioned in paragraphs 18 and 19 above, notwithstanding the right to a jury, if, before the commencement of the trial, the accused waive a jury trial.<sup>5</sup>

21. If the charge is the violation of an ordinance in a matter with respect to which imprisonment may be a part of the punishment, and the accused does not waive a jury, the mayor must, nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as misdemeanors are tried in the court of common pleas on indictment.<sup>6</sup>

22. If the charge is the commission of a misdemeanor, prosecuted in the name of the state, and the accused, being entitled to a jury, does not waive the right, the mayor may, nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as such cases are tried in the court of common pleas on indictment.<sup>7</sup>

23. The mayor may, however, decline to have such state case tried before him by a jury, if in his opinion the public interest will thereby be promoted, and, having entered that fact on his minutes, inquire into the complaint, discharge the accused, or recognize him to the court of common pleas or probate court, as the case may be, or commit him in default of bail.<sup>8</sup>

24. In felonies, and other criminal proceedings not herein provided for, such mayor has jurisdiction and power throughout the county, concurrent with justices of the peace.<sup>9</sup>

<sup>1</sup> § 4548.

<sup>6</sup> § 4531.

<sup>3</sup> § 4527.

<sup>7</sup> § 4532.

<sup>4</sup> § 4528.

<sup>8</sup> § 4533.

<sup>5</sup> § 4530.

<sup>9</sup> § 4533.

25. *Same, in villages.* In villages, the mayor has final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation, unless imprisonment is prescribed as part of the punishment.<sup>1</sup>

26. He has final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is by the constitution entitled to a trial by jury; and his jurisdiction in such cases shall be co-extensive with the county.<sup>2</sup> For other final jurisdiction, see par. 54, this chapter.

27. He has the jurisdiction in the cases mentioned in paragraphs 25 and 26 above, notwithstanding the right to a jury, if, before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case.<sup>3</sup>

28. He may summon a jury, and try the accused, in any prosecution for the violation of an ordinance, where imprisonment is a part of the prescribed punishment, and the accused does not waive a jury; and in such case, judgment must be rendered in accordance with the verdict, unless a new trial, for sufficient cause, is granted.<sup>4</sup>

29. He may decline to permit the trial, mentioned in the last paragraph above, if in his opinion the public interest will be thereby promoted, and having entered that fact on his docket, proceed to inquire into the complaint, and discharge the accused, recognize him to the court of common pleas, or commit him in default of bail.<sup>5</sup>

30. In misdemeanors, prosecuted in the name of the state, he may summon a jury, and try the case, notwithstanding the accused has the right to a jury, which he has not waived, if a request for such trial, subscribed by the accused, is filed in the case before the commencement of the trial; and in such case the trial will be had on the affidavit, in the same manner and with like effect as a trial is had on an indictment for such offense in the court of common pleas.<sup>6</sup>

31. If in the opinion of the mayor the public interest will thereby be promoted, he may decline to permit such trial, and having entered that fact on his docket, proceed to inquire into the complaint, and discharge the accused, recognize him to the court of common pleas or probate court, as the case may be, or commit him in default of bail.<sup>7</sup>

32. In felonies, and other criminal proceedings not herein provided for, such mayor has jurisdiction and power throughout the county, concurrent with justices of the peace.<sup>8</sup> See also pars. 50-54, below.

### POLICE JUSTICE.

33. In villages, the council may, upon the recommenda-

<sup>1</sup> § 4535.

<sup>2</sup> § 4536.

<sup>3</sup> § 4537.

<sup>4</sup> § 4538.

<sup>5</sup> § 4539.

<sup>6</sup> § 4540.

<sup>7</sup> § 4541.

<sup>8</sup> § 4542.

tion of the mayor, by an affirmation vote of two-thirds of all the members elected, appoint some justice of the peace, resident of the corporation, police justice, who will, during the term of office of such mayor, unless removed on suggestion of such mayor by vote of all the members of the council, have concurrent jurisdiction of all prosecutions for violations of ordinances of the corporation, with full power to hear and determine the same, and will have the same powers, perform the same duties, and be subject to the same responsibilities, in all such cases as are prescribed in paragraphs 25-32 above, to be performed by and are conferred on the mayors of such corporations.<sup>1</sup>

34. Such justice of the peace so appointed will be styled "police justice," in which style he must sign all process and records during the time he shall serve; he must have a seal, to be provided by the council, with the name of the state in the center, and the words "Police justice of the village of —," around the margin.<sup>2</sup> All the provisions of this chapter applicable to the mayor of a village apply to such police justice.<sup>3</sup>

#### POLICE JUDGE (ALSO MUNICIPAL COURT).

35. In the city of Toledo there has been established a court having the jurisdiction previously exercised by the Police Court and Justices of the Peace. It is styled the Police and Justice Court.<sup>4</sup> Municipal courts, supplanting the former police courts and justices of the peace, but with more extensive powers than either, have been established in the cities of Cincinnati,<sup>5</sup> Cleveland,<sup>6</sup> Columbus,<sup>7</sup> Dayton,<sup>8</sup> Hamilton<sup>9</sup> and Youngstown.<sup>10</sup> Under the amended constitution establishing what is known as "home rule," there is little similarity between the acts, and in order to ascertain the jurisdiction of each, each separate act must be examined.

36. The jurisdiction of these courts to make inquiry in criminal cases is the same as that of a justice of the peace.

37. Prosecutions for offenses against the laws of the state shall be brought and conducted in the name of the state, and prosecutions for violations of city ordinances shall be brought and conducted in the name of the corporation.<sup>11</sup>

<sup>1</sup> § 4544.

<sup>2</sup> § 4545.

<sup>3</sup> § 4545.

<sup>4</sup> §§ 1772 to 1799.

<sup>5</sup> 103 O. L. 279-291.

<sup>6</sup> 103 O. L. 682-698.

<sup>7</sup> 103 O. L. 292-304.

<sup>8</sup> 103 O. L. 385-396.

<sup>9</sup> 103 O. L. 345-354.

<sup>10</sup> 103 O. L. 354-369.

<sup>11</sup> § 4578.



38. In felonies committed within the county, the court has the powers of a justice of the peace to hear the case, and discharge, recognize, or commit; and if, upon such hearing, the court is of the opinion that the offense is only a misdemeanor, and that the court may entertain jurisdiction of it under paragraph 37 above, a plea of guilty of such misdemeanor may be received, and sentence and judgment pronounced; but if in such case the accused decline to enter such plea, court, without discharging the accused, must cause the prosecuting attorney to immediately file in the court an information against the accused for such misdemeanor, on which charge he must be tried in that court, after an entry has been made discharging him of the felony.<sup>1</sup>

39. Where the charge is the commission of a misdemeanor, and the proof shows that the party has committed a felony, the court, upon the proper affidavit being filed must discharge the party as to the misdemeanor, and admit him to bail or commit him, as the case may be, for the felony.<sup>2</sup>

40. The court has power to issue process, preserve order, and punish contempts, summon and impanel jurors, grant new trials and motions in arrest of judgment, suspend execution of sentence upon notice of intention to apply for leave to file a petition in error, and such other powers incident to the court of common pleas as may be necessary for the exercise of the jurisdiction herein conferred, and the enforcement of the judgments and orders of the court.<sup>3</sup>

41. Prosecutions for offenses against the laws of the state must be brought and conducted in the name of the state, and prosecutions for violations of city ordinances must be brought and conducted in the name of the corporation.<sup>4</sup> See also par. 54, below.

### ACTING POLICE JUDGE.

42. During the absence, inability, or disability of the judge, the mayor may hold the court, or may select for the purpose a reputable member of the bar, or a justice of the peace, residing within the city, who will have the jurisdiction and powers conferred upon judges of police courts, be styled "acting police judge," and, as such, sign all process and records during the time he serves, and perform all other acts pertaining to the office; and in case the mayor hold the court, he will have all the powers and perform all the duties of the judge.<sup>5</sup>

<sup>1</sup> § 4583.

<sup>2</sup> § 4584.

<sup>3</sup> § 4576.

<sup>4</sup> § 4578.

<sup>5</sup> § 14737; as to capacity of appointee under this act, see Molitor v. State, 6 O. C. C. 263, 3 C. D. 445.

## CLERK OF POLICE COURT AND DEPUTIES, ETC.

47. The clerk of the police court has power, when an affidavit is filed with him for a peace warrant, search warrant, or charging any person with the commission of an offense, to issue a warrant under seal of said court to arrest the accused or search the place described; to admit to bail any person accused of a misdemeanor or violation of an ordinance, for his appearance at the next setting of the police court or mayor, as the case may be; and the bond given to continue until the case is finally disposed of; and also to admit to bail any person accused of a felony, when the amount of bail has been fixed by the court or mayor, as the case may be; to appoint one or more deputies, except in cities of the second class, to be approved by the council, to administer oaths and to perform all other things which may be performed by the clerk of the court of common pleas in like cases.<sup>4</sup>

48. The deputy so appointed may perform any duty of his principal.<sup>5</sup>

49. So may any clerk temporarily and duly appointed during the clerk's inability.<sup>6</sup>

## FURTHER, AS TO THE POWERS OF THE MAYOR AND OTHER OFFICERS IN CITIES AND VILLAGES.

50. The mayor has, within the corporate limits, all the powers conferred upon sheriffs to suppress disorder and keep the peace; and he must award and issue all writs and process that may be necessary to enforce the administration of justice throughout the corporation, and for the lawful exercise of his jurisdiction, according to the usages and principles of law; he must subscribe his name and affix his official seal to all writs, process, transcripts, and other official papers; and, in cities having no police judge, in the absence or during the disability of the mayor, he may designate a justice of the peace to perform his duties in criminal matters, which justice will, during the time, have the same power and authority as the mayor.<sup>1</sup>

51. The officer presiding at any trial mentioned in this chapter has like power to punish contempts, and compel the attendance of jurors and witnesses, and to establish rules for the examination and trial of all cases brought before him, as is or may be conferred on justices of the peace.<sup>2</sup>

52. When a fine is the whole or part of a sentence, the court, mayor, or president of the board of trustees, may order that the person sentenced shall remain confined in the county jail, workhouse, or prison, until the fine and costs be paid, or secured to be paid, or the offender be otherwise legally discharged.<sup>3</sup>

<sup>4</sup> § 4594.<sup>5</sup> § 14738.<sup>6</sup> § 4597 (94 v. 69).<sup>1</sup> § 4549.<sup>2</sup> § 4557. See Chapter 27.<sup>3</sup> §§ 4559, 4563.

53. The mayor has final jurisdiction in certain cases of cruelty and adulteration, as more fully stated in paragraph 9, Chapter 34.

FURTHER, AS TO JUSTICES OF THE PEACE, MAYORS, AND  
POLICE JUDGES.

54. A justice of the peace, mayor or police judge, shall have final jurisdiction within his county, in a prosecution for the violation of the laws relating to the protection, preservation or propagation of birds, fish and game, and shall have like jurisdiction in a proceeding for the condemnation and forfeiture of property used in the violation of any such law.<sup>4</sup>

55. The above section relates to the killing of certain birds; to the killing or catching of game; the killing of wild deer; exposing for sale of game unlawfully killed; disturbing pigeon roosts; using sneak boats, etc., in hunting; hunting or shooting on lands of another without permission of owner; using ferrets; and the unlawful killing or catching of fish.

<sup>4</sup> § 1464.

## CHAPTER 3.

POWERS, DUTIES, RIGHTS, RELATIVE PLACE, ETC.,  
OF CONSTABLES, MARSHALS, ETC., GENERALLY.

1. *Various kinds of officers defined, etc.* To aid in clearly understanding the relative position, powers, duties and responsibilities of constables, marshals, and similar officers, the classification of public officers as *legislative, judicial, executive* and *ministerial* should be borne in mind.

2. *Legislative officers* are members of legislative bodies which enact laws or ordinances, such as the Congress of the United States, state legislatures, and city and village councils.

3. *A judicial officer* is one invested by law with power to decide controversies between individuals in civil cases, and to decide accusations made against persons charged with violation of law or ordinance in criminal cases. Judges, justices of the peace and mayors are judicial officers.<sup>1</sup> Justices of the peace, mayors, and police judges are called magistrates.

4. *A ministerial officer* is one whose duty it is to execute the lawfully issued commands of other officers. These commands are very generally in writing, or are partly printed and partly written, are signed by the judicial officer, and are also sealed by him, if he have a seal,<sup>2</sup> and each one is called a *writ*, or *process*. See more fully, Chapter 5, as to writs and process.

5. Constables, marshals, sheriffs, deputy sheriffs, deputy marshals, and policemen, are ministerial officers.<sup>3</sup>

6. *An executive officer* is one whose duty it is to cause the laws to be executed, without waiting or needing to be commanded to do so by another officer. He does this by means of other officers, militia, etc., subject to his orders. The president of the United States, the governor of the state, are executive officers. When the sheriff, constable or

<sup>1</sup> Many officers act sometimes in one capacity, and sometimes in another. For instance, the acts which a justice of the peace is required by law to perform in a particular way, and as to which he has no discretion about the manner of their doing, are of ministerial character. In regard to issuing an order of arrest (for instance) every thing to be done is specifically defined by the statute; and when doing this, he is acting as a ministerial officer. See 22 O. S. 317, 322. But as his duties are in the main judicial, he is classed as a judicial officer. For similar reasons constables, marshals, etc., are classed as and are chiefly ministerial officers.

<sup>2</sup> A mayor and police judge each have a seal, and must put it on all writs, etc., issued by them (§§4550, 4572): but a justice of the peace has no seal.

<sup>3</sup> In American law a constable is an officer of a municipal corporation, usually elected, whose duties are similar to those of a sheriff, although his powers are less and his jurisdiction smaller. 35 Cyc. 1489.



marshal call upon bystanders, or upon the power of the county (*posse comitatus*) to aid in making arrests, quelling riots, etc., they are then acting as executive officers.<sup>1</sup> See pars. 36, 37, and note 1, page 18.

7. There are many other kinds less important to mention here, such as military officers, having command in the army; naval officers, having command in the navy; revenue officers, etc.

### AS TO CONSTABLES.

8. *Are ministerial officers, where, etc.* All constables are ministerial officers in justice's courts, in their respective townships in civil cases, and in their respective counties in criminal cases.<sup>1</sup>

9. *When constable of adjoining township may act.* The law provides, however, that in any case when there shall be no constable in any township, the constable of any other adjoining township in the county is authorized to serve any process that any constable of said township is now or may be authorized to serve by law.<sup>2</sup>

10. *Must serve criminal process, where?* They are authorized and empowered by law to execute all writs and process in criminal cases throughout the county in which they may reside, and where they were elected and appointed,<sup>3</sup> and to arrest, on view or warrant, and bring to justice all felons and disturbers of the peace and violators of the criminal laws of this state.<sup>4</sup>

11. *Must pursue fugitives into other counties.* If any person charged with the commission of any crime or offense, flees from justice, any constable of the county in which such crime or offense was committed, is authorized and required to pursue after and arrest such fugitive from justice, in any other county of this state, and to convey such fugitive before any justice of the peace of the county where such crime or offense was committed.<sup>5</sup>

12. *Are preservers of the peace.* It is the constable's duty to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and, generally, to keep and preserve the peace in his proper county.<sup>6</sup>

13. *Must serve civil process, where?* Civil process may be executed by them throughout the county, under the restrictions and provisions of the law.<sup>7</sup> What these restrictions and provisions are will appear in the succeeding chapters on summons, subpena, and similar subjects.

14. *What writs he must serve, etc.* It is the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process directed and delivered to him.<sup>8</sup>

<sup>1</sup> § 3334.

<sup>2</sup> § 3329.

<sup>3</sup> § 3345.

<sup>4</sup> § 3340, see also § 1737.

<sup>5</sup> §§ 3345, 13502.

<sup>6</sup> §§ 3340, 3336.

<sup>7</sup> § 3334.

<sup>8</sup> § 3341.

15. *Further as to his authority, serving writs, etc.* In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable extends throughout the whole county in which he may be appointed; and in executing and serving process issued by a justice of the peace, he has the same authority and powers over goods and chattels, and the persons of parties as is granted by law to a sheriff or coroner, under like process issued from courts of record.<sup>1</sup>

16 *Certain miscellaneous writs they must serve—of examiners of treasury.* The law provides for the examination of the county treasury at certain times by persons appointed for that purpose by the probate judge, and also that they have and may exercise all the authority to issue subpena and compulsory process, and direct the service thereof by any constable or sheriff, compel the attendance of witnesses and the production of books and papers before him at any designated place, to administer oaths, and to punish for disobedience of subpena, or for refusal to be sworn, or to answer as a witness, which is conferred by law upon courts or officers authorized to take depositions.<sup>2</sup> As to what this authority is, see Chapter 37.

17. *Of coroners.* Constables must serve writs for coroners in certain cases, as more fully stated in Chapter 40.

18. *Of notaries.* And of notaries public, as more fully stated in Chapter 37.

19. *Of county surveyor.* When the county surveyor is establishing any corner or corners of lands within his county, he may issue a subpena, directed to any constable or other fit person, to execute the same, to cause to come before him, such witness or witnesses, as well without as within his county, as the person demanding such warrant, or other person interested requires.<sup>3</sup>

20. *Of militia officer.* Members of regiments of the Ohio National Guard are subject to the payment of certain dues and fines, the amount of which are fixed by the council of administration of each regiment and battalion, subject to the approval of the commander-in-chief. And the commanding officer of any regiment, battalion, company, troop or battery, may arrest any member of his command for the violation of any order, regulation or law for the government of the Ohio National Guard, and may authorize in writing, any constable or police officer of the city, village or township where such violation occurs, to so arrest any such delinquent member; and such commanding officer may turn over to any constable or police officer any member of his command so arrested by him, and such constable or police officer must hold such man so arrested and in his

<sup>1</sup> § 3341.

<sup>2</sup> §§ 2699, 2700 (SS v. 431).

<sup>3</sup> § 2808.

custody until he has been tried by the proper court-martial, or has been discharged by proper authority, and for a period not exceeding five days.<sup>1</sup> If any person temporarily erects any stand, booth, or other structure for the purpose of exposing for sale, giving, bartering, or otherwise disposes of any spirituous or other intoxicating liquors whatsoever, at or within a distance of one mile from any parade or encampment of said National Guard, he may be put immediately under guard, and kept at the discretion of the commanding officer, who may turn over such person to any police officer or constable of the city, township or town wherein such duty, parade or drill, encampment or meeting is held, for examination or trial before any court of justice having jurisdiction of the place.<sup>2</sup>

21. *Of Judges of Common Pleas, Superior and Circuit Court.* Notices of motions in said courts may be served by a sheriff, coroner, or constable, or by a disinterested person. Such service must be made as required for the service of a summons; and when served by an officer, he will be entitled to like fees. The service must be on the party, or his attorney of record, if either is a resident of the county in which the motion is made; and if there is more than one party adverse to such motion, service must be made upon each party, or his attorney.<sup>3</sup>

22. *Other duties of, in upper courts.* Generally, constables may be required to attend the Courts of Common Pleas and Probate Courts of their county, and the Superior Court of Cincinnati, to preserve order therein, and to serve and return all orders, writs and process directed to them by such courts.<sup>4</sup> However, they are seldom called on to perform such duties there, these being almost always attended to by sheriffs and their deputies, or by the coroner of the county.

23. See also paragraph 1 of Chapter 10, which applies to all officers authorized to issue subpoenas.

24. *Escaped convicts to be arrested and returned.* It is the duty of all sheriffs, coroners, and constables to arrest any convict who escapes from the penitentiary, and forthwith convey him to the penitentiary, and deliver him to the warden thereof. They must be allowed eight cents per mile going to and returning from the penitentiary, and such additional compensation as the warden may deem reasonable for the necessary expense incurred.<sup>5</sup>

25. *Arrest of paroled convicts.* The law provides that certain convicts in the penitentiary may, during their compliance with certain conditions, rules and regulations as to their conduct, be allowed to go upon parole outside of the buildings and inclosures, but to remain, while on parole, in the legal custody and under the control of the board of man-

<sup>1</sup> §§ 5250, 5251.

<sup>2</sup> § 5275.

<sup>3</sup> §§ 11373, 11374.

<sup>4</sup> §§ 1565, 1596.

<sup>5</sup> § 13606.



agers of the penitentiary, and subject at any time to be taken back within the inclosure of said institution; and full power to enforce such rules and regulations, and to retake and re-imprison any convict so upon parole, is given said board.<sup>1</sup>

26. The written order of said board, certified by its secretary, is a sufficient warrant for all officers named therein, to authorize such officer to return to actual custody any conditionally released or paroled prisoner; and it is the duty of all officers, including all chiefs of police and marshals of cities and villages, and the sheriffs of counties, and of all police officers and constables, to execute any such order in like manner as ordinary criminal process.<sup>1</sup>

27. *Fees therefor.* For the performance of such duty, the officer must be paid by said managers such reasonable compensation as is provided by law for similar services in like cases.<sup>2</sup> See Chapter 39, as to fees.

28. *Arrest and return of fugitives from Industrial School.* Any fugitive from the boys' industrial school may, on the order of the superintendent, or other officer of the institution, be arrested and returned to the school, or to any officer or agent thereof, by any sheriff, constable or police officer.<sup>3</sup>

29. *Arrest of fugitives from refuge or apprenticeship.* A fugitive from a house of refuge and correction, or a fugitive from apprenticeship under indentures executed by the proper officers thereof, may be arrested and returned to such institution by a sheriff or constable of any county in this state, or police officers of the corporation, or officer of such institution, on the written order of two directors of such institution, directed to such officer, and may be delivered to the custody of such officer of the house of refuge and correction as the directors may name.<sup>4</sup>

30. *Must note on each writ the time of receiving it.* On the receipt of any writ whatever, *except* *supenas*, the constable must note, on the writ, the time he received it.<sup>5</sup> See paragraphs 6 and 7, of Chapter 5.

31. *Must note items of fees.* See paragraph 36 of Chapter 5.

32. *Must make return of process.* It is the duty of every constable to make due return of all process directed and delivered to him, at the proper office and on the proper return day of such process.<sup>6</sup> See paragraphs 4-7, Chapter 5.

33. *Must state what, in his return on the writ.* He must, in his return on the writ, state how he executed it.<sup>5</sup>

34. *Must do what, before returning "Not found."* No constable is allowed to make a return on any process of "Not found," as to any defendant, unless he shall have been once at least to the usual place of residence of the defendant, if such defendant have any residence in the county.<sup>7</sup>

<sup>1</sup> §§ [2170] (89 v. 361) [2171] is valid, 6 O. C. C. 215.

<sup>2</sup> § 13606.

<sup>3</sup> § 1831.

<sup>4</sup> § 4112.

<sup>5</sup> §§ 3338, 10233.

<sup>6</sup> § 3337.

<sup>7</sup> § 3339.

35. *Other duties.* It is his duty to do and perform in all respects whatever, all things pertaining to the office of constable.<sup>1</sup>

36. *May call what aid.* In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary.<sup>2</sup>

37. *Refusing to aid officers in arresting, securing, etc., a criminal, and in preserving the peace.* Whoever, when called upon by the sheriff, coroner, constable, or other ministerial officer, to assist him in apprehending any person charged with or convicted of any criminal offense, or in securing such person when apprehended, or in conveying him to jail or prison, neglects or refuses to render such assistance, is liable to be fined not more than fifty dollars.<sup>3</sup>

38. *To whom to pay over moneys.* Constables must pay over to the party entitled thereto all money received by them in their official capacity, if demand be made by such party, his agent, or attorney, at any time before he returns the writ upon which he has received it.<sup>4</sup>

39. If not paid over by that time, he must pay such money to the justice when he returns the writ.<sup>4</sup>

40. *Justices to receive moneys from constables.* Justices of the peace must receive from constables all moneys collected by them, except when it shall have been paid over by the constable to the party entitled thereto before the return of his execution.<sup>5</sup>

41. *Penalties against.* Constables are liable to ten per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making a false return, or failing to pay over money collected by them, or received in their official capacity; and

<sup>1</sup> §§ 3340, 3345.

<sup>2</sup> § 3336. See paragraph 7 above.

<sup>3</sup> § 12857. The county commissioners must allow a reasonable compensation to any person who is summoned to aid any sheriff or constable, or other officer, as the case may be, in the execution of any writ or process in favor of the state, but such compensation can not exceed one dollar per day, and can be allowed only upon certificate of such officer. § 2485.

<sup>4</sup> § 3343.

<sup>5</sup> § 10482. All moneys so received by such justices, or otherwise collected, with or without process, and received in their official capacity, for the use of any person or persons, must be by them paid over to such person or persons, his or their agent, on demand; and if any justice of the peace refuses or neglects to pay over all moneys by him so received, when it is demanded of him at his office or place of residence, to the person or persons entitled thereto, or to his or their agent, every such justice shall, on motion in the probate court, and five days notice thereof in writing, be amerced in the amount of such moneys with ten per cent. thereon, to and for the use of the party entitled thereto, which amercement must be entered on the record of said court, and will have the same effect as a judgment, and there shall be no appeal therefrom. § 10482.

such judgment must include, in addition to the damages and costs, the penalty provided in this paragraph.<sup>1</sup>

42. *What will excuse non-payment.* If such money be garnisheed in the constable's hands, he will be excused from paying it, to the extent more fully set forth in paragraph 32, of Chapter 19.

43. *Sale of constable's or marshal's property for such money. Surety may be released, if money not paid.* If the property of a constable be levied on, for or on account of any money by him collected or received in his official capacity, the property so levied on must be sold without valuation.<sup>2</sup> If such money be not paid as required, the marshal's or constable's sureties may apply to be discharged, as more fully set forth in Chapter 38.

44. *Duties of, to suppress sale of liquors at fairs.* A constable of the proper township, or the constables specially appointed, and certain other officers, must, upon view or information, without warrant, apprehend any person selling intoxicating liquors in violation of law at or within two miles of the place where an agricultural fair is being held, and seize the booth, tent, wagon, carriage, stand, vessel, or boat at or from which such liquors are being sold, and convey the same to a place of safe keeping, and take the person so offending before some officer having competent jurisdiction, together with an inventory of the things so seized.<sup>3</sup>

46. *May order certain nuisances abated.* The constable may order, in writing, any one who puts the carcass of any dead animal, or the offal from any slaughter-house, or butcher's establishment, packing-house, or fish-house, or any spoiled meat, or spoiled fish, or any putrid substance, or the contents of any privy vaults, upon or into any lake, river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space or common, to remove or abate the nuisance occasioned thereby; and whoever, being the owner or occupant of any such place, knowingly permits any such thing to remain therein, to the annoyance of any of the citizens of this state, neglects or refuses to remove or abate the nuisance occasioned thereby, within twenty-four hours after knowledge of the existence of such nuisance upon any

<sup>1</sup> § 3344.

<sup>2</sup> § 11680.

<sup>3</sup> § 9914. These other officers are judges of any court, sheriff, corner, and justices of the peace. The officer before whom such offender is brought must proceed forthwith to inquire into the truth of the accusation, and proceed as provided by law. § 9914.

The articles so seized will be bound for the payment of all fines and costs assessed against the accused in the proceeding, including the necessary expenses of seizing and detaining the same, and must remain in the possession of the officer who makes the seizure until the determination of the prosecution, and may be sold on process issued therein against the accused. § 9915.



of the above-described premises, owned or occupied by him, or after such notice thereof in writing, is liable to be fined not more than fifty dollars nor less than ten dollars, and pay the cost of prosecution, and in default of the payment of said fine and costs, be imprisoned not more than thirty days.<sup>2</sup> There are certain exemptions from this stated in the note below.

47. *Entitled to what laws.* Many officers, constables included, are entitled to receive one copy of the laws passed at each session of the general assembly, for his use while in office.<sup>3</sup> These laws are bound into volumes and are sent to the county auditor for distribution to the officers entitled thereto.<sup>4</sup>

48. *Must deliver same to his successor.* These officers must each deliver all copies of such laws so obtained to their successors in office.<sup>1</sup>

49. *Penalty for refusing.* If any such person refuses on demand being made to deliver such books to his successor in office, he will be liable to forfeit and pay any sum not less than five nor more than fifteen dollars, to be recovered in an action brought by his successor in office, in the name of the state (for the use of the county where such action is brought), before any justice of the peace of such county.<sup>5</sup>

50. *Same, additional.* The law further provides that all township officers must deliver over to their successors in office all books, records, documents, laws, obligations, papers, blanks, and all other articles and property belonging to their respective offices or deposited with them in their official capacity; and that any person who has been a township officer who refuses to deliver over the same, or any part thereof, shall forfeit any sum not more than fifty nor less than five dollars, to be recovered by action for the use of the township.<sup>6</sup> The constable is a township officer.

51. *As to constable stirring up law-suits, etc.* A constable who encourages, excites, or stirs up any suit, quarrel or controversy between two or more persons, with intent to injure

<sup>2</sup> §§ 12649, 12650, 12651. The foregoing provisions are not to be construed to prohibit the depositing of the contents of privy vaults and catch basins into trenches or pits not less than three (3) feet deep, excavated in any lot, field or meadow, the owner thereof consenting, outside the limits of any municipal corporation, and not less than thirty rods distant from any dwelling, well or spring of water, lake, bay or pond, canal, run, creek, brook or stream of water, public road or highway; provided, said contents deposited in said trenches or pits are immediately thereafter covered with dry earth to the depth of at least twelve inches; nor shall said provisions prohibit the depositing of said contents into furrows situate and distinct, as specified for said trenches or pits; provided, the same are immediately thereafter wholly covered with dry earth, by plowing or otherwise, and provided also, that the owner or occupant of the land in which said furrows are plowed consents, and is a party thereto; the board of health of any municipal corporation may allow said contents to be deposited within the corporate limits into trenches or pits or furrows, situate, distant and to be so covered. §§ 12650, 12651.

<sup>3</sup> § 2279.

<sup>4</sup> §§ 2282, 72.

<sup>5</sup> § 2279.

<sup>6</sup> § 3266 (88 v. 42).

any such person, is liable to be fined not more than five hundred dollars.<sup>3</sup>

### OF MARSHALS AND THEIR DEPUTIES.

52. *The marshal* is the principal ministerial officer of the municipal corporation for which he was elected.<sup>4</sup>

53. *Deputy marshals.* The council of the corporation may appoint one or more deputy marshals, who may execute all writs, process, and orders directed to the marshal. The council may remove such deputies for cause, and may require suitable bond from each one so appointed.<sup>5</sup>

54. *Marshal's duties.* The marshal must execute and return all writs and process directed to him by the mayor, and must, by himself or deputy, attend on the sittings of the mayor's court, to execute the orders and process thereof, and to preserve order therein.<sup>6</sup>

55. *His jurisdiction and that of his deputies* in the execution of all such writ and process, and in criminal cases, and in all cases of a violation of the ordinances of the corporation, is co-extensive with the county, and in civil cases is co-extensive with the jurisdiction of the mayor in the same.<sup>6</sup>

56. They have also, in all matters in any way connected with the trial of civil cases and of state criminal cases by the mayor, the same powers, duties, and responsibilities as constables.<sup>1</sup> In other words, the entire contents of this book, except paragraphs 1 to 21 and 36 to 47 of Chapter 1, paragraphs 8, 9, 16 to 24, 44 to 50, 64 to 71 of Chapter 3, all of Chapter 36, and paragraphs 19 to 25 of Chapter 40, probably, apply as fully to marshals and their deputies as to constables.

57. *He must preserve the peace.* The marshal must suppress all riots, disturbances, and breaches of the peace, and to that end may call upon the citizens to aid him.<sup>2</sup> See paragraphs 6, 36 and 37 of this chapter, and Chapter 29.

58. *Arrests by.* He must arrest all disorderly persons in the corporation, and pursue and arrest any person fleeing from justice in any part of the state. He must arrest any person in the act of committing any offense against the laws of the state, or the ordinances of the corporation, and forthwith bring such person before the mayor or other competent authority, for examination or trial; and he must receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places

<sup>3</sup> § 12847.

<sup>4</sup> § 4385.

<sup>5</sup> § 4385.

<sup>6</sup> § 4386. A village marshal has authority to serve all writs issued by the mayor, for which purpose his jurisdiction extends throughout the county. He can not as marshal execute a state warrant issued by a justice of the peace, either inside or outside of the corporation, nor can he arrest on view outside of the corporation.—Opinion of Lawrence, Att'y-Gen'l, (1884). Vol. G, 114.

An officer of the peace appointed by authority of a city or borough, who holds himself in readiness to answer such calls as fall within the general duties of a constable or sheriff. 26 Cyc. 926.

<sup>1</sup> See § 10491, which is as follows: "The provisions of this title shall, so far as applicable, govern the proceedings of mayors in the exercise of the jurisdiction concurrent with justices of the peace given to them, and also to marshals as ministerial officers of mayor's courts in the same jurisdiction."

<sup>2</sup> § 4386. See 50 O. S. 179.

detention of criminals fleeing or escaping from other places or states.<sup>1</sup>

59. *Disposition of fines, etc.* All fees, costs, fines, and penalties collected by him must immediately be paid over to the mayor.<sup>2</sup>

#### OF SPECIAL CONSTABLES.

62. *Powers, etc., of constable appointed by justice.* The person appointed special constable by the justice, as provided in paragraph 36 of Chapter 1, after taking the oath required by paragraph 37 of Chapter 1, will have the same authority, be subject to the same penalties, and entitled to the same fees, as other constables.<sup>3</sup>

63. *Powers of such constable.* Constables appointed as provided in paragraph 38 of Chapter 1 will have all the power of constables to suppress riots, disturbances, and breaches of the peace; they may, upon view, arrest any person guilty of a violation of any of the laws of the state, and may pursue and arrest any person fleeing from justice in any part of the state; and they may apprehend any person in the act of committing an offense, and, upon reasonable information, supported by affidavit, procure process for the arrest of any person charged with a breach of the peace, and forthwith bring such person before the competent authority, and enforce all the laws for the preservation of good order.<sup>4</sup>

#### OF POLICEMEN, WATCHMEN, ETC., IN CITIES AND VILLAGES.

64. *In the larger cities.* The remarks found in paragraph 43 of Chapter 1, as to the appointment, etc., of such officers

<sup>1</sup> § 4386. See 50 O. S. 179.

<sup>2</sup> § 4388.

<sup>3</sup> § 3332. Such justice will stand as surety, and he and his sureties will be liable in that character for any neglect of duty or any illegal proceedings on that part of any constable so appointed. § 3333. Under a bond given by a justice of the peace, conditioned as required by G. C. § 1721, the sureties are liable "for any neglect of duty, or any illegal proceedings, on the part of" a constable appointed by said justice under § 3331, by virtue of § 3333. *Dunnick v. Howitt*, 40 O. S. 646.

<sup>4</sup> § 9913.



in our large cities, apply also to some of their unusual duties.

65. The laws governing the powers, duties, etc., of these officers in the smaller cities and villages are few, and have not been changed for many years.

66. Provision is made for the appointment by justices of the peace of special policemen for Chautauqua Assemblies, on the application of the board of trustees or general manager thereof.<sup>1</sup>

67. *To enforce the provisions relating to compulsory education* truant officers are required to be appointed. In special village and township districts the board of education has power to appoint a constable or other person as truant officer and to fix the compensation therefor.<sup>2</sup>

68. *Probation officers* may be appointed who are required to make written reports at certain periods, not less than once each month concerning the conduct of probationers.<sup>3</sup>

69. *Powers of the Policeman.* A police force is an organization; it has a controlling mind by which its members may be made to act in concert; while the constable acts upon on his own responsibility and his own conception of his legal duties.<sup>4</sup> A police officer is intimately connected with the enforcement of all laws and ordinances concerning crimes, and is an important factor in preserving the peace and good order of the community.<sup>5</sup>

70. *Duties required of him and difficulties he encounters.* In a recent British work,<sup>6</sup> the author, Dr. Devon, dwells at considerable length upon the difficulties that beset the officer. Many of these are equally applicable to the United States. The pay there, as here, is comparatively small. He has onerous duties imposed upon him. Sometimes he may err in his judgment as to the condition of a prisoner, and may fail to attract the attention of a medical officer to him. On the other hand, if he should call a surgeon too frequently to see persons who it turns out, did not need his services, he may be severely criticized

<sup>1</sup> §§ 5888, 5893.

<sup>2</sup> §§ 7769, 7770, 7771.

<sup>3</sup> § 13712.

<sup>4</sup> *White v. Manistee County*, 105 Mich. 608.

<sup>5</sup> *Clev. v. San Fran. Police Com.*, 3 Cal. App. 174.

<sup>6</sup> Devon, *The Criminal and the Community*, pp. 191-197 (1912).

on this account and perhaps subjected to severe reprimand, suspension, or, may be dismissed. Many calls are made upon him for the display of instantaneous judgment, often greater than upon men much better equipped by superior education and special training. When some extraordinary case attracts attention, blame is lavishly showered upon the officer; it is generally undeserved. He is held blamable for things for which he is unfitted. To the majority of the people he is the living representative of the law. It is his duty to protect the citizens from evil doers, and to arrest offenders. He is the subject of a good deal of "chaff," but his position is generally respected, and although men get into the force who, by temper and experience, are quite unsuited for their work, the great majority discharge the duties laid upon them in a manner that is surprisingly satisfactory, when the severe demands made upon them are taken into account. They are supposed to have a knowledge of the law, and for practical purposes they must know something of medicine, in order that they may give first aid to the injured; they are expected to be able to answer questions of an exceedingly miscellaneous nature when asked by the passing stranger; and they require to be always cool, clear-headed, ready for any emergency and to have a temper that nothing can ruffle. Every district has its own peculiarities, not observable to those who live there, because of custom, but noticed by strangers. It is therefore a good thing for the officers to become acquainted with the customs and manners of the people among whom they live. A policeman will discharge his duties with more comfort to himself, more credit to the force, and a greater benefit to the community if he knows those in the district in which his duties lie. Unless he is in touch with the law-abiding elements therein, unless he knows them, gets their confidence and support, in many cases he will not be in a position to distinguish between conduct that is harmless and conduct that is criminal. For instance, it is well known that professional thieves depend largely on their coolness and daring for their success. If "thieves" were written all over them,

they would starve, and they only earn their living because, to those personally unacquainted with them, they are not distinguishable from honest men. The policeman knows them, and if he sees a person coming out of business premises long before business hours, he quite naturally questions that person by look or by word. If he does not know whether the person has a right to be there, the policeman may make a fool of himself, either by arresting the man, who has had legitimate business on the premises, or by letting a thief get away. He is on the horns of a dilemma in which he ought not to be placed.



## CHAPTER 4.

LAW-SUITS OR ACTIONS AT LAW, GENERALLY;  
THE VARIOUS KINDS OF, THEIR INCIDENTS  
AND PROGRESS.

1. "*Law-suits*" or *actions in court explained, etc.* It may aid the constable or other ministerial officer better to understand his duties, etc., in relation to court proceedings, if the nature and classification of those he must act in are briefly explained, and if the different things that occur, or may occur therein, are briefly stated in their probable order. To this end, it may be well to begin by giving the

2. *Meaning of "the law," etc.—Civil and criminal, etc., laws.* The terms "law" and "laws" have widely different meanings even in ordinary conversation; for we speak, for instance, of the laws of health, the moral law, the laws of nature, the law of gravitation, the law of the land, etc.; but as used in this book, these terms generally mean the enactments of the legislature, also called statutes, or the statute law of the state.

3. Certain portions of the statutes relate to the definition, prevention and punishment of crimes and offenses, these being called *penal* or *criminal laws*; other portions relate to the making and enforcement of contracts, the conveyance and inheritance of property, and similar subjects, and are sometimes called *civil laws*.<sup>1</sup> Other portions relate to the duties, etc., of the various departments of the state government, such as the governor, the legislature, counties, public institutions, etc., and are classed as *political*. Other portions relate to the procedure in the various courts, from the courts presided over by magistrates, to the supreme court, these statutes being classed as *remedial*.

4. *Suit, action, civil action, criminal action.* The proceedings in, or trial of a particular case, in a court are called a *suit* or *action*. Both the nature of things and the law divide these into two leading classes: those relating to crimes or offenses being called *criminal actions*, and those relating to contracts, private wrongs, or other civil law matters being called *civil actions*.

5. *Parties to a civil action.* The person who sues or brings the action is called the plaintiff. In this book he is always designated as E. F. The person who is sued or against whom the action is brought is called the defendant. In this book

<sup>1</sup> See "Tables of Titles" and chapters contained in the General Code of Ohio," in first part of vol. 1 thereof.

he is designated as G. H. There may be more than one plaintiff as well as more than one defendant. Others than they may be concerned in some way as officers, witnesses, jurors, garnishees, etc., but they are not parties to the suit.

6. *How others designated herein.* For convenience in this book, the constable or other ministerial officer is designated as A. B.; the justice or mayor as C. D.; any interested third person, such as garnishee, etc., as T. P.; witnesses generally, as I. J., K. L., etc. Others are variously designated.

7. *Various kinds of civil actions.* A civil action may have for its object: (1) The recovery of money only, such as a suit on a promissory note, account, or for money due in any other way. Such a suit is sometimes called an ordinary civil action; or, (2) It may have for its object the recovery of a specific article or articles of personal property from another person who will not peaceably surrender possession thereof to the person who is, or who claims to be, legally entitled thereto, such a suit being called an action of replevin, or suit of replevin; or, (3) It may have for its object the recovery of the possession of certain real estate, such as a dwelling, store, etc., from an occupant or occupants who will not peaceably surrender the same to the person who is, or who claims to be, legally entitled thereto. Such a suit is called an action of forcible entry and detainer, if the plaintiff claims that the defendant has both wrongfully entered and unlawfully detains the property; or of forcible detainer, if the plaintiff claims that the defendant rightfully entered but wrongfully detains the property.

8. *How an ordinary civil action proceeds.* When some person, say E. F., has a cause of action, say a promissory note or account against another which he wishes to sue upon, he, E. F., or his agent or attorney, gives to the magistrate a paper stating the nature of the claim, and in effect asking him to bring suit therein. This is called a *bill of particulars*; but with it, the constable has nothing whatever to do.

9. *A summons* is then issued by the judicial officer to the ministerial officer, *unless* the defendant voluntarily appears without being summoned. As to this writ, see Chapter 6. See also carefully, Chapter 5 as to all such writs.

10. *A subpoena for witnesses* whose testimony is wanted will probably next be issued. It may happen, however, that no witnesses will be needed, or that they may be expected to appear without being subpoenaed. It may also happen that several subpoenas may issue in the same case. As to this writ, see Chapter 7.

11. *A summons to jurymen* may, before or after the issuance of subpoena, be given to the ministerial officer. As to this writ, see Chapter 8.

12. *Trial of the case.* It will generally, though not always, be the case that the ministerial officer will have no

further duties to perform or writs to serve till the trial of the case is begun. During trial he must be present to preserve order, etc., (see paragraph 1, of Chapter 9.) During the trial, or just before it begins, he may also have to serve

13. *An attachment for one or more witnesses or jurymen* who, in contempt of court or otherwise, have refused or neglected to appear, as commanded by subpoena or summons. As to this writ, see Chapter 10.

14. *Judgment and execution.* If the plaintiff recovers judgment at the trial, and it be not paid or appealed from, *execution* will probably be issued soon after to that officer (constable), commanding him to levy on and sell enough of defendant's property to pay the judgment and costs. As to this, see Chapters 11 to 18.

15. *Attachment of defendant's property before judgment.* However, it will not infrequently be the case that the defendant is not a resident of the county in which the suit is brought, or that he has committed some fraudulent act concerning his debt, either of which will justify the plaintiff in having the defendant's property attached or seized before judgment, to make sure of having the property on hand to sell after judgment to satisfy the plaintiff's claim, and costs. As to this part of such a trial, see Chapter 19.

16. *Arrest before judgment.* And it will occasionally be the case, though not often, that the defendant has committed some fraud which will have rendered him liable to be arrested and imprisoned before judgment in this same suit, in reference to the claim sued on. In such case, an *order of arrest before judgment* will be issued to the officer, as set forth in Chapter 25.

17. *Arrest after judgment.* Or there may be grounds for an *order of arrest after judgment*, similar to those indicated in paragraph 23 above. As to this part of such a trial, see Chapter 26.

18. *The action of replevin* is begun by the plaintiff filing an affidavit, after which the magistrate issues a summons and writ of replevin combined, as more fully set forth in Chapter 20.

19. In such an action, after the summons is issued, there may be subpoenas, summons to jury, and attachment for witness and juror, as in an ordinary civil action, and to be served, etc., in the same way exactly as in such an action, and as more fully set forth in the respective chapters relating to these writs, which see, as occasion arises.

20. *The action of forcible entry and detainer* is begun by the plaintiff filing with the magistrate a statement of his case, called a "Landlord's complaint," which takes the place of the bill of particulars mentioned in paragraph 8 above. But before such action is begun, a written notice to leave the



premises must usually be given to the occupier of the premises by the landlord. Sometimes the latter asks the constable to serve this notice on the tenant; but when the constable does this, he acts as the agent of the landlord, and not as an officer. See more fully Chapter 21.

21. In this suit, also, there may be summons, subpoenas, summons to jury and attachment of witness or juror, etc., which must be served, etc., as set forth in the chapters relating to these writs respectively, which see.

22. *Criminal actions* are generally begun by some one (and this must in many cases be the constable or marshal), making an affidavit, accusing some person or persons of some violation of the law, as more fully appears from Chapter 28.

23. The next step will be the issuing of a warrant to the constable or marshal. As to this, see Chapter 28.

24. In these cases also, there may be subpoenas, summons for a jury, attachment of witness or juror, and execution for costs. If so, they must be served, etc., as set forth in the various chapters relating to these writs, which see for fuller particulars.

25. During the progress of the case, and after trial, there may be occasion to commit the accused to the jail of the corporation, or of the county, or to the work-house. The writ directing and authorizing the ministerial officer so to commit him is called a *commitment* or *mittimus*. As to this, see Chapter 28.



## CHAPTER 5.

WRITS, COPIES THEREOF, AND THEIR SERVICE,  
GENERALLY—TO WHAT EXTENT OFFICER  
PROTECTED BY.

1. *Writ defined.* A writ is a command in writing, issued by a judge, a justice of the peace, mayor, or other judicial officer, to a constable, marshal, or other ministerial officer, ordering the officer receiving it to do the thing therein directed to be done. In some cases, the command is to others than the officer, as in the case of subpoena to witnesses in civil cases; but even then the writ is issued to the ministerial officer to serve on the persons therein named. In all cases, the writ is returnable to the officer issuing it. Among writs are included summons, subpoenas, warrants, writs of replevin, of restitution, of execution, order of attachment, etc.

2. *Original writ.* The writ so issued by the judicial officer is often called the original writ, to distinguish it from the certified copies thereof which the ministerial officer must make and serve, as mentioned below. This is always its meaning in this book. It sometimes means the first writ issued in a case.

3. *Process* is the means whereby a court enforces obedience to its orders. As the word is used in the statutes and in this book, it means much the same as *writ*. See for instance, paragraphs 12, 13 and 15, of Chapter 3.

4. *Ministerial officers' duties as to writs generally—"Return" explained.* The officer receiving a writ should first note on it the time of receiving it, as further explained in paragraph 6, below; and then he must proceed to do, or try to do, what it commands him to do, or he must notify other persons, such as witnesses, etc., of what it commands them to do. He must serve the writ on the person required, either by arresting that person, as in case that writ be a warrant, or by reading it or stating the substance of its contents or by giving a certified copy thereof to the proper person, as in case of a summons, or by leaving a certified copy of the writ at the usual place of residence of that person, if the writ be a summons or subpoena and the person can not be found, as is more fully explained elsewhere. After having properly served the writ, he must make on its back, his "*return*," or report, of what he has done in accordance with its commands; and then, at the proper time, he must

give this writ, with his "return" or statement thereon duly signed, back to the officer who issued it to him. He must never part with this original writ till he so returns it to the issuing officer.

5. In other words, the ministerial officer carefully preserves the writ given to him by the judicial officer, and after obeying, or trying to obey, its commands, he writes on the back of this original writ his report of what he has done in compliance with its commands, which report is called his "return"; and he then delivers it, so indorsed or written on ("returned," as the law calls it) to the judicial officer who issued it to him. See paragraph 32, of Chapter 3.

6. *Noting on the writ the time of receiving it.* The first thing the officer should do after receiving any writ (except a subpoena) is to make a note or memorandum on it of the time he received it, as follows: "Received this writ April 2, 18—."<sup>1</sup>

7. *Such note is no part of the return* which the officer must make on the writ, though it is very often put into the return as a part of it. That is, the officer often begins his return by saying something like the following: "Received this writ April 2, 19—, and on April 3, 19—, I served the same on the within named G. H.," etc. He should have noted such time at once, and then in due time, should have begun such a return as follows: "On April 3, 19—, I served the within writ on G. H.," etc. Some standard works include this note of time of receiving the writ in the forms of returns they contain, though no reason or authority for so doing is given.<sup>2</sup>

8. *When writ is served by copy.* If the ministerial officer must serve a writ seemingly by giving it to a person or officer, such as a subpoena to a witness, a summons to a defendant, or a commitment to a jailer or superintendent of a workhouse, he does not and must not give the original writ to such person or officer, but he makes a *copy* of the original writ, and certifies on the copy that it is a true copy of the original writ, and makes his return, or official report, on the original writ, and then gives this *certified copy* to such person or officer, and gives the original back to the judicial officer, as stated above.

9. For instance, when it becomes the duty of the constable to take any person to the jail of the county, he must deliver to the sheriff or jailer a *certified copy* of the execution, commitment or other process by authority of which he holds such person in custody; and such constable must return the *original writ* to the justice who issued this writ.<sup>3</sup> This is generally also true when prisoners are to be taken to workhouses, and similar places of confinement. But see paragraph 64 of Chapter 28.

<sup>1</sup> §§ 10233, 3338.

<sup>2</sup> See par. 3 of Chap. 17.

<sup>3</sup> See pars. 52-58 of Chap. 28. (§ 3342.)

10. *The manner of serving writs and making return thereof* is pointed out in detail in subsequent chapters. For instance, the manner of serving and making return of summons is shown in Chapter 6; of subpoenas, in Chapter 7; of attachment, in Chapter 19; of replevin, in Chapter 20; of warrants, in Chapter 28; and similarly, as to other writs, under the several chapters relating thereto.

11. "*Certified copy*" *defined, etc.* A certified copy of a writ or other instrument is a copy thereof on the back of which or elsewhere thereon is written, or printed, and signed, a certificate such as is given in paragraph 13 below.

12. *Form of certificate.* The officer or person who serves any writ by copy, as explained in paragraphs 5 and 6 above, should indorse on such copy a certificate, in substance as follows:

13. "I certify that the within is a true copy of the original writ"; or, "I certify the within to be a true copy of the original writ", or, "a true copy"; below which words the officer holding the writ writes his name and office, as "Richard Roe, constable"; or, "John Doe, marshal"; or, "John Doe, marshal, by Richard Roe, deputy."

14. *Who should make such copies.* It is the duty of the ministerial officer to make all such copies himself; though the officer issuing the original writ sometimes makes these copies for him. But making these copies is no part of the judicial officer's business, and when he does so, he merely acts as the ministerial officer's clerk, because the ministerial officer is too negligent or too incompetent to do this himself.

15. In some cases, only one person need be named in the copy, even though several persons are named in the original writ, as is explained in paragraph 24, of Chapter 7.

16. Courts now construe liberally officers' returns in favor of their sufficiency,<sup>1</sup> but they will not accept returns made in a loose or guessing way, or on the information of others, such as, "so far as it appears to me," or, "as I am informed." Precision is one of the first requisites of a good return.<sup>2</sup>

17. *Amending the return.* The return, if wrongly made, may generally be amended so that it shall be in accordance with the facts, but an officer has no absolute *right* to amend his return. It is in the discretion of the court to allow or refuse it.<sup>3</sup> The officer is liable to an action for a false return, which action may be brought by any one affected by the return, though he may not have been a party to the suit in which it was made.<sup>4</sup>

18. *When return "not found" allowed.* A return of "*not found*" can not be made by the constable unless he has

<sup>1</sup> 7 Conn. 350; 8 Id. 134.

<sup>2</sup> Litt. S. C. 424.

<sup>3</sup> 4 O. 74; 4 Dana, 264.

<sup>4</sup> 9 Mass. R. 393.



been at least once at the defendant's usual place of residence, if he has any within reach of the process.<sup>1</sup>

19. *When writs must be executed.* All writs in civil cases must be executed on or before their return day; and if it chances that its return day falls on Sunday, it must be executed the preceding Saturday, if the case be one on which service on Sunday would be illegal.<sup>2</sup> See also paragraph 21, as to Sunday.

20. *Return day* is the day on which the writ must be delivered back to the officer who issued it.

21. *How time computed.* Unless otherwise specially provided, the time within which an act is required by law to be done must be computed by excluding the first day and including the last; and if the last be Sunday, it must be excluded.<sup>3</sup> For instance: If a writ be issued May 5, returnable within twelve days, May 5 would not be counted, and May 17 would be last one of the twelve days. But if May 17 be Sunday, then May 16 would be last day on which such writ could be served.

22. *As to blank spaces in writs.* The summons, execution, and every other paper made or issued by a justice, must be filled up without a blank to be filled by another; otherwise it is void.<sup>4</sup>

23. *For other important matters as to writs,* see Chapter 3; and for matters specially relating to each separate writ, such as summons, execution, commitment, or mittimus, etc., see chapters relating to such writ.

24. *Justice may depute persons to serve process.* A justice, at

<sup>1</sup> § 3339. An official return, duly made upon process by an officer who is required to take an official oath, such as sheriffs, constables, etc., in relation to facts which it is his legal duty to state in such return, is, as between the parties to the suit, and privies (that is, those whose rights are involved in, and necessarily dependent upon it), conclusive of the facts stated therein, except in a suit against the officer. As to all other persons, than the parties and privies, such return is *prima facie* evidence of the facts therein stated, and subject to be disproved whenever it is offered in evidence. But the privy above mentioned must be such as would enable the person thus concluded to maintain an action against the officer for a false return to such process—that is, one who is so directly interested in the process and the return thereon, that if the return is false, he would suffer and be entitled to damages. Therefore, if A. purchases a horse of B., and C., a creditor of B., afterward issues attachment process against B., and a false return is made on the attachment, showing that the horse was attached—in such case, A., not being a party to the attachment proceedings, has no right of action against the officer for the false return, and is not therefore concluded thereby, even though it should be claimed that the sale of the horse by B. to A. was fraudulent as to creditors. Swan's Treatise, p. 149, citing 14 O. S. 240; Gwynne Sheriffs, 473; 26 Vt. 750; 4 O. 137. But the return will not be received as evidence on the trial of a case to prove facts not required by the statute to be returned by an officer. 17 O. S. 30.

<sup>2</sup> § Leveridge v. Plaistow, 2 Blacks. 29.

<sup>3</sup> § 10216.

<sup>4</sup> § 1734. This does not mean that a writ will be void if it contains blank spaces, but that it will be void if such a space is left to be filled after it is issued.



the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution, with or without an order to arrest the defendant, or to attach property: such deputation must be in writing on the process.<sup>1</sup>

25. *Authority of such person—fees.* The person so deputed has the authority of a constable, in relation to the service, execution, and return of such process, and is subject to the same obligations; but there can be no fee for his services taxed in the bill of costs.<sup>2</sup>

26. *When officer is protected by the writ.* It is a well established principle of law that ministerial officers, being obliged to execute process, are protected in the rightful discharge of their duty, *provided the process issued from a court or magistrate having jurisdiction of the subject-matter.* If the magistrate proceed unlawfully in issuing the process, he, and not the constable or marshal, will be liable for the injury. That officer is justified, even when the process under which he acts is voidable for irregularity or mistake in issuing it. The law does not permit such officer, nor his subordinates to examine into the regularity of the proceedings of the court whose process they execute, nor does it authorize them to proceed or to refuse to proceed, as they may judge best.<sup>3</sup>

27. But the rule is different where the magistrate is proceeding in a matter *in which he has no jurisdiction.* In such case, the process itself is void, and can afford no protection.<sup>3</sup>

28. *When officer may safely obey or disobey the writ.* The rule that an officer is justified by his process, not void upon its face, is only for the protection of the officer; and although he may execute such process, yet if it is in fact void for want of jurisdiction in the court or officer issuing it, he may re-

<sup>1</sup> § 1732.

<sup>2</sup> § 1733.

<sup>3</sup> See Taylor v. Alexander, 6 O. 144, 147. and cases there cited; Harding v. Trustees 3 O. 231; Robbins v. Clements, 41 O. S. 285; Harrington v. Heath, 15 O. 483; Railway v. Cronin, 38 O. S. 122, 125; Beebe v. Scheidt, 13 O. S. 406, 416; Moore v. Robinson, 6 O. S. 302. See 5. O. C. C. 246-250; Henline v. Reece, 54 O. S. 599.

It is also a general principle of law that whenever magistrates are acting *within the limits of their jurisdiction*, their irregularities as to procedure and form are treated with great liberality and indulgence, even in criminal matters, by the higher courts, and they will disregard any errors which do not affect the substantial rights of the parties. Therefore, *if the magistrate has jurisdiction over the subject-matter of an action, and the parties are before him by proper process, or appearance without process, his judgment is not void, however irregular or erroneous it may be.* But if the magistrate attempts to proceed in any matter *in which he has no jurisdiction*, and to enforce his judgment therein, his proceedings are absolutely void, and he is just as liable for any such act as he would be if he were not a magistrate at all; and the ministerial officer who obeys any writ commanding him to enforce such judgment is also liable as if he were not such officer, except that the good faith of such officers would be a mitigating circumstance of considerable weight. See same cases as above in this note, and § 11573.

fuse to execute it, and no action will lie against him for such refusal.<sup>1</sup>

29. For additional matter as to this, see paragraphs 12-23 of Chapter 22, paragraphs 3, 4, of Chapter 25, and paragraph 24 of Chapter 37.

29a. While a ministerial officer is not obliged to serve process in his hands, when he has knowledge from other sources that the court or officer issuing it was without jurisdiction of the person against whom it is directed, he will, nevertheless, be justified in executing it according to its command, if regular in form, and the want of jurisdiction does not appear on its face.<sup>2</sup>

30. *Difference in form of writs issued by justice of the peace and mayor.* There is but little difference between the forms of writs issued by a justice and by a mayor, the chief difference being in the beginning and closing lines and designation of office.

31. The justice generally begins his writ by stating his place or limits of jurisdiction (called the venue). In most civil cases, he begins as follows: "State of Ohio, Butler county, Fairfield township, ss.;" or, in cases where his jurisdiction extends throughout his county, his venue may be "State of Ohio, Butler county, ss." He directs his writ "To any constable of said township," or "To any constable of said county." In the body of the writ he describes himself as "a justice of the peace in and for said township," or some similar expression. When he closes, he says: "Witness my hand, on this — day of —, 19—," and signs, "C. D., Justice of the Peace," or merely "C. D., J. P." He has no seal. See paragraph 4, Chapter 3.

32. The mayor gives his venue as "State of Ohio, Hamilton county, the municipal corporation of Glendale." He directs his writ "To the marshal of said municipal corporation, greeting." Or in place of the foregoing, he may say, "The State of Ohio, — county, the village [*or, city*] of —," and direct his writ "To the marshal of said city [*or, village*], greeting," or he may omit the word "greeting." He describes himself in the body of the writ, "The undersigned, mayor of said municipal corporation [*or, city, or, village*]," or in some similar way. His closing line is: "Witness my official signature and seal [*or, Witness my hand and seal*], this — day of —, 19—." He has a seal. See paragraph 4, Chapter 3. He puts his seal on his writs, generally at the lower left-hand corner; and he signs his writs, "C. D., Mayor."

33. Nearly all blanks in this book are given as for justices; but the changes above indicated would make mayor's

<sup>1</sup> Newburg v. Munshower, 29 O. S. 617; Henline v. Reece, 54 O. S. 599; *Ib.* 605, and cases there cited.

<sup>2</sup> Henline v. Reece, 54 O. S. 599; *Ib.* 605, and cases there cited.

blanks of them. For two instances of mayor's blanks, see Chapter 37.

34. There are similar differences between the blanks of a justice and of a police justice, or police judge.

35. *Differences between a constable's and marshal's returns, etc.* The only differences between the returns, certificates, etc., of a constable and of a marshal are, the constable describes himself, if at all, as "A. B., Constable," and signs as "A. B., Constable," and the marshal describes himself, if at all, as "A. B., Marshal," and signs as "A. B., Marshal."

36. *Items of fees on writ.* The officer serving any writ must give thereon an itemized account of his fees, or he is not entitled to any fees.<sup>1</sup>

37. For examples showing how this is to be done, see, for instance, paragraphs 40 and 43 of Chapter 6, paragraph 31 of Chapter 7, paragraph 35 of Chapter 25, and several other places.

38. Such items are often placed next below the officer's return on the writ, this being generally a convenient and suitable place; but they are no part of the return. Read paragraph 7 of this chapter, which applies to these items of fees as well as to noting the time there mentioned.

<sup>1</sup> See par. 37 of Chap. 6, and par. 7 of Chap. 39.

## CHAPTER 6.

## SUMMONS, RETURN OF, ETC.

1. *Constable has no duties in civil matters till commanded.* The constable has no duties to perform in civil matters till a writ is given to him by the magistrate, commanding him what to do.

2. *Generally, summons first writ.* In an ordinary civil action the first writ so given him is the summons,<sup>1</sup> which commands him to notify a certain defendant or defendants, to appear before the magistrate to answer to the action of the plaintiff on his claim, which is briefly described in the writ.

3-8. *Form of summons in ordinary civil action.*  
The State of Ohio, Hamilton County, ss:

To any constable of Springfield township:

You are hereby commanded to summon G. H., to appear before me, the undersigned, a justice of the peace, at my office in Springfield township, on the 28th day of May, A. D. 19—, at 8 o'clock A. M., to answer the action of E. F. who claims of the defendant the sum of \$100.00, with interest thereon at six per cent. from the 10th day of June, A. D. 19—, for goods sold and delivered by plaintiff to defendant (*etc., as may be*). The plaintiff asks a judgment for the amount indorsed hereon, and for costs.

You will make due return of this summons, on the 28th day of May, 19—.

Given under my hand this 20th day of May A. D., 19—.

C. D., Justice of the Peace.

9. *Form of indorsement on summons—*

Amount (including interest) for which plaintiff will take judgment, if you fail to appear.....	\$111.30
Justice's fees.....	2.00
Constable's fees.....	.70

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Total .....114.00

10. Sometimes an order of arrest, or an order of attachment, or a writ of replevin, is given to the constable at the same time the summons is. Such cases will be considered in chapters following this one, but not here.

11. *Must note on summons time of receiving it.* The first thing to be done on receiving a summons, is to make a note

<sup>1</sup> § 10233.



thereon of the time it was received.<sup>1</sup> See paragraphs 6 and 7 of Chapter 5.

12. *Summons must be served when.* The summons must be served on the defendant (or defendants), at least three days and not more than twelve days before the day set for the trial.<sup>2</sup>

13. *Fractions of days not counted.* The law does not, however, take into account *fractions* of days in such matters. Therefore, if the time of trial were, for instance, on the eleventh day of April, at 8 o'clock in the morning, the summons must be served not later than the eighth of that month; but it might be served at *any time* on the eighth, even though it were just before midnight of that day.

14. *But the proper course* for the constable to follow is to diligently serve all writs as soon as he can after receiving them, thus avoiding the danger of something happening to prevent his doing so, if he negligently delays till the last day allowed by law, and especially till the last hour of that day.

15. *How summons served on individuals.* A summons must be served by delivering a *certified copy* of it, and of the indorsements thereon, to the defendant, or by leaving such copy at the defendant's usual place of residence.<sup>3</sup>

16. *How copy of summons certified, and by whom.* The copy of the summons so delivered to the defendant, or left at his residence, must be certified by the officer or person serving it;<sup>3</sup> and the form of such certificate, which should be written on the back of the summons, and below the indorsement referred to in the preceding paragraph, may be as follows.

17-19. *Form of certificate on copy of summons—*

"I certify that the within and above is a true copy of the original writ, and of the indorsements thereon.

A. B., Constable (*or marshal, etc.*)"

20. *Copy of summons left where, is no service.* If the defendant has moved away, or has run away, service can not be made by leaving a copy at the place which *was* his place of residence.<sup>4</sup> And it will not do to leave a copy at the defendant's store or other place of business.<sup>5</sup> It must be left at his *usual place of residence*. See par. 15, above.

21. *How to proceed when real name of party is unknown.* The law provides that when the name of the defendant is not known, a description of the defendant under any name may

<sup>1</sup> § 10233.

<sup>2</sup> § 10237. If an officer serves a summons either sooner or later than the time specified by law for serving it, such service is void, and is no notice to the defendant. 18 Ind. 91.

<sup>3</sup> § 10237. See paragraphs 3 to 9, for forms of summons and indorsements thereon. It *may* be served by a person not an officer. See paragraphs 23 and 24, Chapter 5.

<sup>4</sup> Wright's Rep. 563.

<sup>5</sup> Lambert v. Sample, 25 O. S. 336.

be put into the summons instead of the defendant's true name.<sup>1</sup> The summons in such case would read, "You are hereby commanded to summon John Smith, defendant, real name unknown (*then would follow a description of defendant*), to appear before me," etc. But unless the description were so accurate that no mistake would likely arise, it would be best for the plaintiff to go with the officer and point out to him the person to be summoned.<sup>2</sup>

22. *How summons served on corporations.* A summons against a corporation, except as specially provided in paragraphs 23, 24, 27, 28, in this chapter, may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof; but if the defendant be an incorporated river transportation company, whether organized under the laws of the state or another state, the service of a summons may be upon the master or other chief officer of any of its steamboats or other craft, or upon any of its authorized ticket or freight agents, at any port where it may transact business.<sup>3</sup>

23. *Service on insurance company.* Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency of the insurance company, the service may be upon the chief officer of such agency.<sup>4</sup>

24. *Service on foreign corporations.* If the defendant is a foreign corporation, having a managing agent in the state, see paragraphs 29, 30, 31, next page.

25. Where corporations of another state are authorized to do business in this state, on condition that they become, so far as remedies and suits against them here, subject to the exclusive jurisdiction of the courts of this state, such corporations become amenable to the jurisdiction of the courts of this state, and the service of process may be the same as upon other domestic corporations of a like kind, in the absence of any law relating to service upon such foreign corporation.<sup>5</sup>

26. If there be two or more defendants, and they reside in different townships of the county, the constable of the township where the justice resides, may serve all the defendants.<sup>6</sup>

<sup>1</sup> §§ 10373, 11367.

<sup>2</sup> Swan's Treatise, 56.

<sup>3</sup> § 10238. See note, page 48.

<sup>4</sup> § 10243.

<sup>5</sup> Ins. Co. v. Best, 23 O. S. 105. Swan's Treatise, Chapter 9, § 4.

<sup>6</sup> See Swan's Treatise, Chapter 9; § 4; G. C., §§ 3334, 3341.

27. *Service on railroad companies.* In suits against a railroad company, the summons may be served by the constable of the township in which the suit is brought, and must be served personally upon the president of such company, if he be a resident of the county in which suit is brought, or by leaving a certified copy at his place of business, if that place be within such county; but if the president of any such company is not a resident of the county; or has no place of business within the county, the summons may be served personally at least eight days before the trial day mentioned in the summons, upon the person having charge of a ticket office, or freight depot, owned by or under the control of such company, if such ticket office or freight depot be situated within the county where such suit was brought; but when served upon the president, it may be served within the time and in the way prescribed for other individuals.<sup>1</sup>

28. If the service can not be made as directed above, make return "not found," as shown in paragraphs 47, 48, below.

29. *Foreign corporation.* Where the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent.<sup>2</sup>

30. An express company's local agent, who keeps an office and receives and forwards packages for the company, and does all the business usually done at such office, is such a managing agent.<sup>3</sup>

31. When service is on a subordinate officer, because the president or chief manager is not a resident of the county, or has no office therein, that fact must be shown in the return to the summons or the service will be defective.<sup>4</sup>

32. *An acknowledgment of service* on the back of the summons, signed by the defendant, or his voluntary appearance at the trial is equivalent to service.<sup>5</sup>

33. *Service on minors.* If the defendant is a minor under fourteen years of age, the service must be upon him (or her), and also upon the minor's guardian, or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or upon the person with whom the infant lives. But if none of these can be found, service upon the minor alone will be sufficient.<sup>6</sup>

34. If the minor is above the age of fourteen years, serving on him or her alone is sufficient.<sup>6</sup>

35. The summons may be served upon a minor, and upon his parent, guardian, or other person specified in paragraph

<sup>1</sup> § 10242. See note, p. 48.    <sup>2</sup> § 10244.    <sup>3</sup> *Express Co. v. Johnson*, 17 O. S. 641.    <sup>4</sup> *Fee v. Iron Co.*, 13 O. S. 563.    <sup>5</sup> § 10237.    <sup>6</sup> § 10245.



33 above, either by delivering personally to such minor, guardian, parent, etc., a certified copy of the writ, or by leaving such copy at the usual place of residence of the person to be served.<sup>1</sup> But it is always best, when practicable to serve all writs personally, and this is especially true of minors, and if under 14 years of age is imperative.<sup>1\*</sup>

36. *Summoning arbitrators or referees.* Sometimes differences between parties to a suit before a magistrate are, by agreement of parties, submitted to arbitration of persons chosen by such parties. If these arbitrators are not present, the magistrate may issue a summons to the constable, marshal, or other officer or person, directing the persons so selected, to appear at the time and place of the trial by them. The officer or person receiving such summons must serve it and make return of his doings thereon in substantially the same way as directed in this chapter.<sup>2</sup>

37. *Items of officers' fees* must be given, as more fully stated in paragraph 35 of Chapter 5, or they may not be paid. Such items are no part of the return;<sup>1</sup> but they are often stated next below it, as is done, for illustration, in paragraphs 40 and 43 below. They may be put elsewhere on the writ, however, as well as below the return.

#### FORM OF RETURN ON SUMMONS

38-39. *When there is but one defendant who was served personally—*

On March 24, 19—, served this writ on defendant by delivering a certified copy thereof, and of the indorsements thereon, to him (or her), personally. A. B., Constable.

40. *Constable's (or marshal's) fees on this writ—*

Service and return.....	25
Copy .....	25
Mileage, 3 miles.....	30

---

Total ..... 80

41-42. *Same when there are more than one defendant, and all are served personally, same day—*

On April 3, 19—, served this writ on all the defendants by delivering a certified copy thereof, and of the indorsements thereon, to them each, personally.

A. B., Constable.

43. *Constable's (or marshal's) fees on this writ—*

Service and return, 5 persons.....	\$1 25
Five copies.....	1 25
Mileage, 12 miles.....	75

---

Total .....\$3 25

44. *Same, when served personally on different days—*

On April 3, 19—, served this writ on the defendants, E. F., G. H. and I. J., and on April 4, 19—, on the defendant

<sup>1</sup> § 10245.

<sup>1\*</sup> *Keys v. McDonald*, 1 Handy, 287.

<sup>2</sup> See § 10364.



K. L., and on April 6, 19—, on the defendant M. N., by delivering a certified copy thereof, and of the indorsements thereon, to them each, personally. A. B., Constable.

45-46. *Same, when there is but one defendant, served by copy left at residence—*

On April 4, 19—, served this writ on defendant by leaving a certified copy thereof, and of the indorsements thereon, at his (or her) usual place of residence.

A. B., Constable.

47-48. *Same, when defendant or defendants not found—*

Defendant (or defendants) not found in my jurisdiction.

A. B., Constable.

49-51. *Same, when some are served personally, some by copy at residence, and on different days, and some not found—*

On May 1, 19—, served this writ on defendants C. D. and E. F. by delivering a certified copy thereof, and of the indorsements thereon, to them each personally, and on G. H. by leaving a certified copy thereof, and of the indorsements thereon, at his usual place of residence; and May 2d, 19—, on defendant I. J. by leaving such copy at his usual place of residence, and on defendant K. L. by delivering such a copy to him personally. The defendants M. N. and O. P. not found in my jurisdiction.

A. B., Constable.

52-53. *Same, on minor under fourteen years of age.*

On May 2, 19—, served this writ, by delivering a certified copy thereof and of the indorsements thereon, to defendant C. D. and to F. D., his guardian [or, his father].

54. [*But if neither father nor guardian can be found, say, to defendant C. D. and to G. D., his mother; or, to defendant C. D. and to H. I., the said H. I. having the care of the said C. D.; or, the said H. I. being the superintendent of the — Children's Home, and having the custody of said C. D. by reason of his being an inmate of said home, or otherwise, as may be; and in either case add, neither the father nor the guardian of said C. D. could be found.*]

A. B., Constable.

55. On May 1, 19—, served this writ on defendant, M. S. by delivering a certified copy thereof, and of the indorsements thereon, to him personally. Neither father, guardian, mother, nor person having care of said M. S. found.

A. B., Constable.

56-58. *Same, when served on a railroad company.*

On May 1, 19—, served this writ on defendant by delivering a certified copy thereof, and of the indorsements thereon to T. P., president of the within-named railroad company, and resident of — township in this county.

*Or say, according to the facts, served this writ on defendant by leaving a certified copy thereof, and of the indorsements thereon, at the place of business of T. P., president of within-named defendant railroad company in said*

county; *or say*, by delivering a certified copy of this writ and indorsements thereon to X. Y., station agent [*or ticket agent, or freight agent, etc.*], of the within-named defendant railroad company, who has charge of its ticket office [*or freight depot, etc., as may be*], situate in said county, the president of said company having no residence or place of business in said county, and the principal business office of said company not being kept in this township of —, in said county.<sup>1</sup>

A. B., Constable.

59-61. *Same, when served on a corporation other than a railroad company.*

On May 1, 19—, served this writ on defendant by delivering a certified copy thereof, and of the indorsements thereon, to T. P., the president; [*or say, mayor; or, chairman of the board of directors; or, chairman of the board of trustees; or name the office of the officer served, and say: chief officer of the within-named corporation; or, if the chief officer is not found in the county, then describe the officer upon whom the writ is served according to his office, as thus: "Clerk of the within-named corporation. No chief officer of said corporation could be found within the county."*]

A. B., Constable.

62-63. *Same, when no chief officer, etc., found.*

On May 1, 19—, served by leaving a certified copy of this writ, and indorsements thereon, at the office of the within-named corporation, with X. Y., the person having charge of said office. No chief officer, and no cashier, treasurer, secretary, clerk, or managing agent of said corporation could be found within the county.

A. B., Constable.

64-65. *Another form, served on a foreign corporation.*

On May 1, 19—, served by delivering a certified copy of this writ, and indorsements thereon, to X. Y., the managing agent of the defendant in this state.

A. B., Constable.

66. A return by the constable of service of summons in these words, "served on the second day of January, 1861, by reading," shows a want of service and not merely a defective service or return; and a judgment by default based on such service is a nullity.<sup>2</sup>

<sup>1</sup> See pars. 22, 27, above. §§ 10238, 10239 and 10240, when considered together, show that in all suits before a J. P., against corporations, service must be made as provided in §10238 [par. 22, this chap.], except where the defendant is a railroad company, and its principal business office is not kept in the township in which suit is brought; in which case, and in which case only, summons may be served as provided in §§ 10239-40 [par. 27, this chap.] *R. R. v. Jenks*. [Lucas Com. Pleas, 1892, unpublished].

In proceedings in error to reverse a magistrate's judgment against a railroad, such judgment must be reversed unless the record shows affirmatively [by the petition, by constable's return, or otherwise], that the case is one of those provided for in §§ 10239, 10240. *Ib.*

The decision in case of *North v. R. R. Co.*, 10 Ohio St. 548, is not now applicable, by reason of changes in statute since that decision was rendered. *Ib.*

<sup>2</sup> Principle applied to *Vandevoort v. Trisler*, 4 N. P. 37.

## CHAPTER 7

## SUBPENA.

1. Generally, the second writ which must be served in an action is the subpoena.

2. *Defined.* A subpoena is an official notification to one or more persons to appear at a time and place therein mentioned, and give evidence in a suit or other judicial proceeding before the officer issuing it.

3. *Who may issue, etc.* Any justice or mayor may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony in civil cases;<sup>1</sup> and any such justice, mayor, or police judge may issue subpoenas and other process to bring witnesses before them in criminal cases. In complaints to keep the peace, and in cases of misdemeanor, the subpoena must be served within the county, and in other cases it may be issued to or served in any county.<sup>2</sup>

4. *Time of receiving need not be stated.* The subpoena is the only writ on which the time of its receipt by the officer serving it need not be stated.<sup>3</sup>

5. *Who may serve, etc.* A subpoena may be served by a constable or any other person.<sup>4</sup>

6. *How served.* It must be served by reading it, or by stating its contents to the witness, or by leaving a copy thereof at his usual place of residence.<sup>5</sup>

7. It will be noticed that the law in the preceding paragraph does not authorize a subpoena issued by a magistrate to be served by giving a copy thereof *to the witness*, as a summons may be served on a defendant. If the witness can not be found, the subpoena may then be served by leaving a copy at his residence. This is probably to prevent costs from being so greatly increased as they could be by serving many witnesses with copies at 25 cents per copy.<sup>6</sup>

<sup>1</sup> §§ 10314, 4548.

<sup>2</sup> § 13495.

<sup>3</sup> § 3338. See par. 30, Ch. 3.

<sup>4</sup> § 10315. When not served by a constable or some person deputed for that purpose by a justice, no fee can be charged in the suit for serving it. § 10316.

This is true also of subpoenas to take depositions. § 11501.

<sup>5</sup> § 10315.

<sup>6</sup> But the more general provisions of section 11505, applicable chiefly to the higher courts, provides that "The subpoena shall be served either by reading or by copy delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness." It is therefore not unusual for constables and







18-22. *Form of subpoena, in criminal case.*

The State of Ohio, Hamilton County, ss.

To any Constable of the County, Greeting:

You are commanded to summon C. D., E. F., L. H., I. K., L. M., N. O., P. Q. and R. S. to appear before me, the undersigned, a justice of the peace in and for said county, at my office therein, on the 28th day of May, 19—, at 2 o'clock p. m., to give testimony, and the truth to say, touching a complaint made on behalf of the State against G. H. And hereof fail not, under the penalty of one hundred dollars, and have you then and there this writ.

Given under my hand this 20th day of May, A. D. 19—.

C. D., Justice of the Peace.

23. It will be noticed that the subpoena in civil cases is directed *to the witness*, while the one in criminal cases is directed to the *ministerial officer*. But they are both served alike, and the form of *certificate* and of *return*, given below, is the same for both subpoenas.

24. *How many witnesses named in copies, etc.* Only one witness need be named in the copies served,<sup>1</sup> but that one must be the one at whose residence that copy is left. To illustrate: In the following return, it appears that I. K., L. M. and N. O. were served by copy. In I. K.'s copy, *he* only need be named; in L. M.'s copy, L. M. only, and in N. O.'s copy, N. O. only, although in the *original*, all these and others are named. But in such case, it would not be proper service to leave L. M.'s copy at N. O.'s residence, etc.

25. *A certificate* must be indorsed on each copy served, as is fully explained in paragraphs 11-14 of Chapter 5.

26-29. *Form of return on subpoena (on the original writ only.)*

May 28, 18—, I served the within writ on the within-named C. D., E. F. and L. H. by reading the same to them personally (*or*, by stating the contents thereof to them personally), and on I. K., L. M. and N. O. by leaving a certified copy thereof at the usual place of residence of each of them. R. S. not found.<sup>2</sup> C. D. is entitled to mileage for two miles, E. F. for five miles, L. M. for one mile, and N. O. for four miles. P. Q. demanded his fees, which were not paid.

A. B., Constable.

30. *Other forms of returns* can easily be adapted from the above, for one person only served personally, or by copy, etc., in the same way as directed in the case of returns to the summons, in Chap. 6.

31. *Constable's fees on this writ.*

Service and return for 7 persons.....	\$0 85
Three copies, 25 cents each.....	75
Mileage, <sup>3</sup> 15 miles.....	90
Total.....	<hr/> \$2 50

<sup>1</sup> § 11505.    <sup>2</sup> See par. 34 of Chap. 3.    <sup>3</sup> In my opinion a constable can only charge mileage for the shortest distance necessary to be

32-34. *Another form of return.*

I served this writ on the witnesses named within and below on the days and in the manner indicated opposite their respective names, C. P. meaning "By delivering a certified copy of this subpoena to this witness," C. C. meaning "By leaving a certified copy of this subpoena at this witness's usual place of residence," R. meaning "By reading the subpoena to this witness," S. meaning "By stating the contents of this subpoena to this witness." The other within-named witnesses not found in my jurisdiction. The figures in the "miles" column indicate the distance from witness's residence to place of trial. In the "Fees" column, F. N. means that witness demanded his fees, which were not paid, and F. P. means that witness demanded his fees and was paid fees and mileage for one day.

NAMES OF WITNESSES.	HOW SERVED.	DATE OF SERVICE.	MILES.	FEES.
E. F.....	C. C.	May 10, 19—.	2	F. N.
L. H.....	C. P.	May 10, 19—.	4	F. P.
I. K.....	R.	May 10, 19—.	1	
L. M.....	S.	May 11, 19—.	..	
N. O.....	R.	May 13, 19—.	5	
Etc.....	Etc.	Etc.		

A. B., Constable.

traveled in order to serve all the persons named in a subpoena. Where several witnesses reside at the same place, he can not charge full mileage for each, but only one for all of them. I think that a constable is entitled to charge twenty-five cents for a copy of subpoena where the subpoena is served by copy. A subpoena is certainly a writ, and in Section 3347 the language is general, "for copies of all writs . . . served, twenty-five cents," no exception being made in respect to subpoenas.—Opinion of Lawrence, Att'y-General, (1885). Vol. G, 292.

## CHAPTER 8.

SUMMONING JURY, HAVING CHARGE THEREOF,  
ETC.

1. *About summoning juries.* It will often happen in such cases as are now under consideration, that a trial by jury will be demanded, and that at some time after the summons is issued and before the trial comes off, the constable or marshal will be ordered to summon a jury.

2-5. *Form of summons for jury—*  
The State of Ohio. } ss.  
—— County. }

*To any constable of — township, greeting:*

You are hereby commanded to summons (*here the persons selected for jurors are named*) to appear before me, at my office in said township, on the 28th day of May, A. D. 19—, at 8 o'clock, A. M. (*or forthwith*), to serve as jurors in a case pending before me, then and there to be tried, and this they shall in no wise omit. And have you then and there this writ, with your doings thereon.

Given under my hand, this 27th day of May, A. D. 19—.

C. D., Justice of the Peace.

6. *How such summons served.* The law provides that the constable (*or other officer*) must serve such summons by a *personal* service thereof, and must return the original summons to the magistrate at the time appointed for the jury trial, having first made a return thereon, showing what persons were summoned.<sup>1</sup> But the law does not provide *in what manner* such personal service must be made, as it does in the case of the summons<sup>2</sup> and subpoenas.<sup>3</sup> It is probable that it would be sufficient service to read the summons to the juror, or to state its contents to him, or to give him a certified copy of the summons. If the latter course is adopted, only the name of the juror to whom the copy is given need be written in his copy.<sup>4</sup>

7-9. *Form of certificate on copy of summons given to juror—*  
I certify that the within is a true copy of the original writ.

A. B., Constable.

10-12. *Form of return on the original summons for jury—*

On May 27, 19—, I personally served this writ on the within named (*here give the names of all served on that*

<sup>1</sup> § 10343.

<sup>2</sup> See Chapter 6, paragraph 15.

<sup>3</sup> See Chapter 7, paragraph 6.

<sup>4</sup> See paragraph 24, Chapter 7.

day. If not all served on that day, say also, and on May 28, 19—, I served said writ on—and here mention all served on that day; and so on, according to the facts. If any of them, X. Y., for instance, could not be served, say, X. Y. not found.)

A. B., Constable.

13. *Constable's fees on this writ—*

Summons.....	\$1 00
Six copies, 25 cents each.....	1 50
Mileage, 7 miles.....	50

Total .....\$3 00

14. A constable has no right to demand in advance his fees for summoning a jury.<sup>1</sup>

15. *The constable must be present at the trial,*<sup>2</sup> and when everything is ready for trial, he will call the names of the jurors who have been summoned.<sup>3</sup>

16. *Talesmen.* If, from challenge or other cause, the panel shall not be full, the constable may fill it in the same manner as is done by the sheriff in the Court of Common Pleas.<sup>2</sup>

17. In such case, in that court, the sheriff must summon a sufficient number of talesmen to make up the deficiency,<sup>4</sup> but no person known to be in and about the court-house can be selected without the consent of both parties.<sup>5</sup>

18. *Jury under charge of constable, etc.* After the jury shall have been sworn, they must sit together, and hear proofs and allegations of the parties; and, after hearing them, must be kept together in some convenient place, under the charge of a constable, until they have agreed upon their verdict, or shall be discharged by the justice.<sup>6</sup>

19. The officer having the jury under his charge, must not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and the constable must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.<sup>7</sup>

20. *View of the property or place by jury.* The court, when of opinion it is proper for the jurors to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, may order them to be conducted in a body, under the charge of an officer, to the place, which must be shown to them by a person appointed by the court for that purpose; and while the jurors are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.<sup>8</sup>

<sup>1</sup> Moriarity v. Devine, 1 O. C. C. 82.

<sup>2</sup> § 10345.

<sup>3</sup> § 10345.

<sup>4</sup> § 11431. Not repealed by implication. 11 O. C. C. 24, 31.

<sup>5</sup> §§ 11434, 4553.

<sup>6</sup> § 10349.

<sup>7</sup> § 11449.

<sup>8</sup> § 11448. Such view is solely to enable the jury to apply the evidence offered on the trial. 54 O. S. 344.



21. *May ask court as to law, etc.* After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the matter of law must be given, and the justice or mayor may give his recollection as to the testimony on the point in dispute, in the presence of, or after notice to, the parties or their counsel.<sup>1</sup> The officer in charge of them must then conduct them back to their place of deliberation; and then act as directed in paragraph 19, above.

22. There are similar provisions as to the jury in the trial of criminal cases.<sup>2</sup>

<sup>1</sup> § 11452.

<sup>2</sup> See §§ 13688-90.

## CHAPTER 9.

'TRIAL OF CASE, AND MINISTERIAL OFFICERS'  
DUTIES THEREAT.

1. *The constable*, being the ministerial officer of the justice's court,<sup>1</sup> is in duty bound to be present at the trial of all cases, to preserve order, to execute such subpoenas, attachments of witnesses or jurors as may be in contempt, to have charge of the prisoners in criminal cases, etc., and to perform such other similar duties as the law or the magistrate may require.

2. *The marshal*, being the ministerial officer of the mayor's court,<sup>2</sup> must in like manner and for like reasons be present at the trial of all causes in that court.

3. *Having charge of jury*. During the deliberations of the jury, if there be a jury in the case, it will be in charge of the constable or marshal, as more fully stated in Chapter 8.

4. *This applies to trial of criminal cases* as well as to the trial of civil cases. As to criminal trials, see Chapter 28.

<sup>1</sup> See par. 8 of Chap. 3.

<sup>2</sup> See Chap. 3.

## CHAPTER 10.

## ATTACHMENT FOR WITNESS OR JUROR.

1. *Compelling absent witness or juror to attend.* It sometimes occurs that a witness who has been duly subpenaed, or a juror who has been duly summoned, does not obey the writ and is absent at the time of trial. In such cases, the magistrate whose writ is thus disregarded may issue a warrant, or attachment, for the arrest of such witness or juror, and commanding the ministerial officer to bring such delinquent before the magistrate to answer for his disobedience and to compel him to perform his duty.<sup>1</sup>

2-7. *Form of such warrant or attachment.*

State of Ohio, — county, ss.

E. F., Plaintiff,	}	Before C. D., justice of the peace of [etc., or, mayor of, etc., as may be].
vs. G. H., Defendant.		

To any constable of said township:

Whereas, it appears by proof to the satisfaction of the undersigned, a justice of the peace in and for said township [or, mayor, etc.], that P. Q. has been duly subpenaed [or, summoned] according to law, to appear before me, at my office, on the 28th day of May, A. D., 19—, at 8 o'clock A. M., to testify [or, act as juror] in the above stated case; and it also appearing as above that [if a witness, his testimony is material and that] he has neglected or refused to attend as required:

You are therefore commanded to arrest and bring the said P. Q. before me, the said justice of the peace, at my office in said township, forthwith [or, state the time, if not forthwith], to testify [or, act as juror] in the said case, and to answer to the State of Ohio for the said disobedience. And of this writ make legal service and due return.

Given under my hand, this 28th day of May, A. D. 19—.

C. D., Justice of the Peace.

8. *How such writ served and arrest made.* The person named in such writ is arrested in the same way as is described in Chapter 22. No copy of the writ is required in such case.

9-10. *Form of return on writ.*

May 10, 19—. I have the body of the within named P. W. now in court.

A. B., Constable:

<sup>1</sup> §§ 10318, 10320, 10344. Notary may issue such writ, 50 O. S. 618.

11. *Constable's fees on this writ.*

Service and return.....	\$ .40
Mileage, two miles.....	.25
Total.....	.65

12. *Punishment of witness for contempt, etc.* When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars; an entry of such fine, stating the reason therefor, must be made by the justice in his docket, and it then has the effect of a judgment in favor of the State of Ohio against the delinquent, and can be enforced against his person or property.<sup>1</sup>

13. The manner of such enforcement is stated in Chapters 11 to 18, from which it appears that the constable, etc., may have further duties to perform concerning such witness. And all this applies to jurors as well as to witnesses.<sup>2</sup>

14. *Certain distinctions.* An examination of Chapter 37 will show that the provisions against delinquent witnesses subpenaed to have their depositions taken are more extensive and severe than those in this chapter against such delinquents in trials of cases before magistrates. For this reason, and to avoid confusing the officers serving writs, these provisions are put in separate chapters.<sup>3</sup> /

<sup>1</sup> § 10319. Every person so subpenaed and neglecting to appear or refusing to testify, is also liable to the party in whose behalf he shall have been subpenaed, for all damages which such party shall sustain by reason of such delinquency. § 10320.

<sup>2</sup> § 10344.

<sup>3</sup> That the power of the magistrate to punish witnesses for disobeying the subpoena in trials before him is limited to the provisions of this chapter seems clear, since § 10490 provides that "the provisions of title one of part third of the revised statutes, which are in their nature applicable to the proceedings before justices, and in respect of which no provision is made in this title, are applicable to the proceedings before justices of the peace." But provision is made as to punishment of such witnesses, and therefore the provisions of Chap. 37 do *not* apply to witnesses in trials before magistrates.



## CHAPTER 11.

## EXECUTION—ISSUANCE, KINDS AND FORMS OF.

1. *Execution defined, etc.* Execution, in law, is putting the sentence of the law in force. In civil actions, it is the manner of getting the debt or damages or other thing for which judgment has been obtained.

2. *The writ of execution.* The writ of execution is the written command of the justice or other judicial officer to the constable or other ministerial officer, directing him to carry into effect the judgment rendered.

3. *Issuing execution.* The magistrate who renders a judgment for the payment of money, or his successor, must issue to some constable of his township, or to the marshal of his municipal corporation, an execution to enforce such judgment, within five years of its date or its revivor, or of the last execution issued thereon, unless the judgment creditor directs otherwise;<sup>1</sup> and any justice of the peace may issue executions on any judgments on the docket of any other justice of his township who may be unable to issue such executions in consequence of sickness, absence, or any other cause.<sup>2</sup>

4. *Execution, by whom issued, and to whom directed.* The execution must be directed to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, or by the justice in whose hands the docket of any justice of the township has been placed, in consequence of the justice who may have rendered judgment being unable to issue by reason of sickness, absence, or any other cause.<sup>3</sup>

5. *Other requisites.* It must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county and township where, and the time when, it was rendered; the amount of the judgment, and if less than the whole is due, the true amount due thereon.<sup>3</sup>

It must, in all cases, direct the officer to make return of the execution, and a certificate thereon, showing the man-

<sup>1</sup> See § 10399.

<sup>2</sup> § 10415.

<sup>3</sup> § 10417.

ner in which he has executed the same, in thirty days from the time of his receipt thereof.<sup>1</sup>

6. *Different kinds of executions.* The statutes classify executions issued by magistrates, and direct concerning them, as follows:

7. If it be a case where the defendant can not be arrested, the execution must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto.<sup>2</sup> It is this kind of execution that is most frequently issued by magistrates, and it will be further considered in paragraphs 12-16, below.

8. If it be a case where any of the judgment debtors are certified on the docket as surety, the execution must command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal, subject to execution within the jurisdiction, must be exhausted before any of the property of the bail can be taken in execution.<sup>3</sup> For form, see paragraphs 20-24, below.

9. If it be a case where the defendant may be arrested in addition to the foregoing, it must direct the officer, if sufficient property of the defendant, subject to the execution, can not be found to satisfy the judgment, that he arrest the debtor, and commit him to the jail of the county, until he pay the judgment or be discharged according to law, unless the execution be accompanied by an order of arrest, as hereinafter provided in Chapter 26.<sup>3</sup>

10. When the execution is on a judgment against joint debtors, upon one or more of whom the summons was not served, the execution must contain a direction to collect the amount out of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. If such judgment be also such that the defendants are subject to arrest thereon, the justice must further specify the names of those defendants served with the summons, who may be arrested for want of property.<sup>4</sup>

11. *Execution for costs.* Execution for costs may be issued at the instance of parties interested, or the magistrate may for his own benefit issue such execution for costs due in cases tried before him.<sup>5</sup>

12-16. *Form of common execution against personal property—*  
The State of Ohio, — County, — Township, ss.

To any constable of said county:

Whereas, on the — day of —, A. D. 19— (*the date of*

<sup>1</sup> § 10417.

<sup>2</sup> § 10417. For procedure when the judgment is against a township,  
see § 3276.

<sup>3</sup> § 10417.

<sup>4</sup> § 10418.

<sup>5</sup> §§ 3028, 10416.

*the judgment*), E. F. obtained a judgment against G. H., before me, the undersigned, a justice of the peace for said township, for the sum of — dollars — cents, and — cents costs [*if part of the judgment has been paid, here add: upon which there remains due the sum of — dollars and — cents, with interest from the — day of —, A. D. 19—, until paid, with increase costs, etc.*], (*in the two preceding blank spaces are stated only the judgment creditor's costs. The unpaid costs made or caused by the party or parties against whom the judgment is rendered, must be indorsed on this writ as "judgment debtor's costs"*)

You are therefore commanded to collect the amount of said judgment, with costs indorsed and increase, out of the personal property of the said G. H., and pay the same to the party entitled thereto; and make return of this execution and a certificate thereon, showing the manner in which you have executed the same, in thirty days from the time of your receipt hereof.

Given under my hand, this — day of —, 19—.

C. D., Justice of the Peace.

17-19. *Form of indorsement on executions.* The following is the form of the indorsements on the execution, referred to above, the items varying in accordance with the facts in each case:

Amount of judgment debt.....	\$249.70
Judgment creditor's costs.....	1.20
Judgment debtor's costs.....	3.60
Interest.....	18.72
This execution and filing.....	40
<i>Constable's fees on this writ—</i>	
Service and return.....	40
Mileage, 2 miles.....	25
Four per cent.....	10.72
Advertising.....	25
Storage .....	1.00
( <i>Etc., if other items</i> ).....	
Total.....	\$286.24

20-24. *Form of execution against chattels or body in special cases—*

The State of Ohio, — County, — Township, ss.

To any constable of said county:

Whereas, on the — day of —, A. D. 19—, E. F. obtained a judgment against G. H. [*if so, say, principal debtor, and E. O., his surety, or, and E. O. and F. P., his sureties; or, if G. H. was sued as executor, administrator, guardian, etc., say, against G. H., as administrator (etc.) of the estate of G. Q., deceased, or otherwise, according to the facts*], before me, the undersigned, a justice of the peace for said township, for the



sum of — dollars — cents, and — dollars and — cents costs.

[*In the two preceding blank spaces, only the judgment creditor's costs are stated. The unpaid costs made or caused by the party or parties against whom the judgment is rendered must be indorsed on this writ as "judgment debtor's cost." For form of indorsement and items of fees, see paragraph 19, above. If part of the judgment has been paid, upon which is due the sum of — dollars and — cents, with interest from the — day of —, 19—, until paid, with increase costs, etc.*]

You are therefore commanded to collect the amount of said judgment, as above stated due, with costs indorsed and increase, out of the personal property of the said G. H. [*if so, certified on my docket to be the principal debtor, and for want thereof you make the same of the personal property of the said E. O. and F. P., certified as aforesaid to be sureties, or, out of the personal property which was of the said G. Q. at the time of his death, and in the hands of said G. H. yet to be administered*], and pay said moneys to the party entitled thereto.

*If the execution is also for the arrest of the judgment debtor, here will be added:* And the said judgment being rendered in a case where the said G. H. is subject to arrest and imprisonment by virtue of an order of arrest before judgment, executed, if therefore sufficient property of the said G. H. (etc.), subject to this execution, can not be found to satisfy said judgment, as above stated due, and costs, then you are further commanded to arrest the said G. H., and commit him to the jail of said county until he pay said judgment, as above stated due, and costs, or until he be discharged according to law.

Make return of this execution and a certificate thereon, showing the manner in which you have executed the same, in thirty days from the time of your receipt hereof.

Given under my hand, this — day of —, 19—.

C. D., Justice of the Peace.

25-30. *Form of execution after judgment for costs.*—  
The State of Ohio, — County, ss.

To any constable of — township:

Whereas, in a certain action lately prosecuted before the undersigned, C. D., a justice of the peace (*or, before U. V., a former justice of the peace*) in and for said township and county, wherein E. F. was plaintiff and G. H. was defendant, the costs of the said G. H. (*or, E. F.*) were taxed at — dollars and — cents, and judgment therefor was rendered on the — day of —, A. D. 19—.

You are therefore commanded, that of the goods and chattels of said —, you cause to be made the costs aforesaid, with interest thereon from the — day of —, 19—, until paid, and costs that may accrue.



Make return of this execution and a certificate thereon, showing the manner in which you have executed the same, in thirty days from the time of your receipt hereof.

Given under my hand, this — day of —, 19—.

C. D., Justice of the Peace.

31-34. *Form of indorsement and constable's items of fees on such execution—*

Costs stated within.....\$

Interest on same.....

This writ and filing.....

*Constable's fees on this writ—*

Service and return.....

Mileage, — miles.....

Four per cent.....

Advertising.....

Storage.....

Summoning and swearing appraiser..

(Other items, if any).....

Total .....\$

35. When a constable has levied on goods and chattels which remain unsold, the justice issues an order, commanding any constable to whom the same may be directed or delivered, to expose such property to sale.<sup>1</sup> This writ is called a *venditioni exponas*.

36-41. *Form of order of sale of property levied on (venditioni exponas)—*

State of Ohio, — County, — Township, ss.

To any constable of said county:

You are hereby commanded, that the personal property of G. H., to wit (*here follows a description of the property*), which you (*or, A. R., late constable of said county*) levied upon, and which remains unsold, you expose for sale, to satisfy as well a certain judgment obtained on the — day of —, A. D. 19—, by E. F. against G. H., before the undersigned, a justice of the peace of said township, for the sum of — dollars and — cents, and the costs, being — dollars and — cents [on which judgment and costs there has been paid — dollars and — cents, leaving a balance due thereon of — dollars and — cents], with interest on the same from the — day of —, A. D. 19—, till paid, as also the costs of increase.

Make return of this execution and a certificate thereon, showing the manner in which you have executed the same in thirty days from the time of your receipt hereof.

Given under my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace.

<sup>1</sup> § 10416.

42-46. *Form of indorsement and constable's items of fees on order of sale—*

Amount of judgment debt.....	\$
Judgment creditor's costs.....	
Judgment debtor's costs.....	
Interest.....	
Costs on former execution.....	
Justice's costs on this writ.....	

*Constable's fees on this writ—*

Service and return.....	
Mileage, — miles.....	
Four per cent.....	
Advertising.....	
Summoning and swearing appraisers.	

Total .....\$

## CHAPTER 12.

## EXECUTION, CONTINUED — PROPERTY EXEMPT FROM EXECUTION.

1. The provisions contained in this chapter with respect to exemptions apply to all courts in this state, including justices of the peace and mayors' courts, so that a person is entitled to all the exemptions in any case or proceeding, or before any court or officer, that he may be entitled to in any other case or proceeding, or before any other court or officer.<sup>1</sup>

2. *Property of unmarried women exempt from execution.* Every unmarried woman may hold the following property exempt from execution, attachment, or sale, to satisfy any judgment or order, to wit: 1. Wearing apparel, to be selected by her, not exceeding in value one hundred dollars. 2. One sewing-machine. 3. One knitting-machine. 4. A Bible, hymn-book, psalm-book, and any other books not exceeding in value twenty-five dollars.<sup>2</sup>

3. *Exemptions to heads of families and widows.* Every person who has a family, and every widow, may hold the following property exempt from execution, attachment, or sale, for any debt, damages, fine, or amercement, to wit: 1. The wearing apparel of such person or family; the beds, bedsteads, and bedding necessary for the use of the same; one cooking-stove and pipe; one stove and pipe used for warming the dwelling; and fuel sufficient for the period of sixty days, actually provided and designed for the use of such person or family. 2. One cow, or, if the debtor owns no cow, household furniture, to be selected by him or her, not exceeding thirty-five dollars in value; two swine, or the pork therefrom, or, if the debtor owns no swine, household furniture, to be selected by him or her, not exceeding fifteen dollars in value; six sheep, the wool shorn from them, and the cloth or other articles manufactured therefrom, or, in lieu thereof, household furniture, to be selected by the debtor, not exceeding fifteen dollars in value; and sufficient food for such animals for the period of sixty days. 3. The Bibles, hymn-books, psalm-books, testaments, and school-books used in the family, and all family pictures. 4. Provision actually provided and designed for the use of

<sup>1</sup> § 11728.<sup>2</sup> § 11721.

such person or family, not exceeding fifty dollars in value, to be selected by the debtor; and other articles of household and kitchen furniture, or either, necessary for such person or family, to be selected by the debtor, not exceeding fifty dollars in value. 5. One sewing-machine; one knitting-machine; and the tools and implements of the debtor necessary for carrying on his or her trade or business, whether mechanical or agricultural, to be selected by him or her, not exceeding one hundred dollars in value. 6. The personal earnings of the debtor, and the personal earnings of his or her minor child or children, for three months, when it is made to appear, by the affidavit of the debtor, or otherwise, that said earnings are necessary to the support of such debtor, or of his or her family; and such period of three months must date from the time of issuing any attachment or other process, the rendition of any judgment, or the making of any order, under which the attempt may be made to subject such earnings to the payment of a debt. But only 90 per cent of such earnings of the debtor are exempt, if the debt is for necessities furnished him or his family, etc. 7. All articles, specimens, and cabinets of natural history or science, whether animal, vegetable, or mineral, except such as may be kept or intended for show or exhibition for money or pecuniary gain.<sup>1</sup> And all of this applies to non-residents as well as to residents of the state.<sup>2</sup>

4. *Married woman has same exemptions as heads of families.* When a married woman sues or is sued alone, like proceedings are had, and judgment may be rendered and enforced, as if she were unmarried, and her separate property and estate are liable for the judgment against her, but she is entitled to the benefit of all exemptions to heads of families.<sup>3</sup>

5. *Special exemption to physicians, draymen, farmers, etc.* Every person who is the head of a family, and engaged in the business of draying for a livelihood, is entitled to hold, in addition to the exemptions specified in the preceding paragraph, one horse, harness, and dray exempt from execution; every head of a family who is engaged in the business of agriculture is entitled to hold, in addition to the exemptions provided for in the preceding paragraph, exempt from execution, one horse, or one yoke of cattle, with the necessary gearing for the same, and one wagon; and every head of a family who is engaged in the practice of medicine is entitled to hold, in addition to the exemptions specified in said paragraph, one horse, one saddle and bridle, and also books, medicines, and instruments, pertaining to his profession, not exceeding one hundred dollars in value, exempt from execution.<sup>4</sup>

6. *Certain property of benevolent societies exempt.* The regalia, insignia of office, journals of proceedings, account-books,

<sup>1</sup> § 11725 (93 v. 316). See 49 O. S. 651.

<sup>2</sup> *Sproul v. McCoy*, 26 O. S. 577.

<sup>3</sup> § 11591. See 47 O. S. 429; 50 O. S. 417; 52 O. S. 468.

<sup>4</sup> § 11726. See note to par. 22, below.



and the private work, belonging to any benevolent society in this state, are exempt from seizure or sale to satisfy any judgment or decree hereafter rendered against such society.<sup>1</sup>

7. *Beneficiary funds to be exempt from execution.* Any beneficiary fund, not exceeding five thousand dollars, set apart, appropriated, or paid, by any benevolent association or society, according to its rules, regulations, or by-laws, to the family of any deceased member of such family, will not be liable to be taken by any process or proceedings, legal or equitable, to pay any debt of such deceased member.<sup>2</sup>

8. *Certain property of certain companies exempt from execution.* A railroad company which has begun and partly built its road, but is unable to finish and operate the same for want of means, may take subscriptions conditioned that the proceeds thereof shall not be used or applied upon the debts of the company; and all money or material collected upon such subscriptions, and all material or implements purchased with such money for the construction of the track, houses, depots, and rolling-stock of the company, will be exempt from execution, or other process or proceedings for the payment of the debts of the company, so long as such money, material, or implements are used or designed for the construction of such track, houses, depots, and rolling-stock.<sup>3</sup>

9. *Property kept and used to extinguish fires exempt.* All property used, or kept to be used, by any municipal corporation or fire company, for the use of extinguishing fire, are exempt from execution and sale to satisfy any judgment or order arising upon contract or otherwise; but the owner thereof may create valid liens thereon by bill of sale or mortgage.<sup>4</sup>

10. *School property exempt.* All property, real or personal, belonging to any board of education, is exempt from sale on execution, or other writ or order in the nature of an execution.<sup>5</sup>

11. *Notary's seal and register exempt.* The official seal and register of a notary public are exempt from execution.<sup>6</sup>

12. *Appraisal of exempted property.* In all cases where it is necessary to ascertain the amount or value of personal property exempt under this chapter, it must be estimated and appraised by two disinterested householders of the county, to be selected by the officer holding the execution, and by him sworn to impartially make such appraisement.<sup>7</sup>

13. *When subsequent paragraphs do not apply.* The subsequent paragraphs of this chapter do not extend to a claim for work and labor less than one hundred dollars, nor to im-

<sup>1</sup> § 11723.

<sup>5</sup> § 4759.

<sup>2</sup> § 11722.

<sup>6</sup> § 123.

<sup>3</sup> § 8792.

<sup>7</sup> § 11727.

<sup>4</sup> § 11724.

pair the lien of a mechanic, or other person, under any statute of this state, for materials furnished or labor performed in the erection of the dwelling-house thereon, nor for the payment of taxes due thereon.<sup>1</sup>

14. *Right to exemption may be waived by mortgage.* The owner of chattel property which is exempted by law from execution and sale for the payment of debts, is not divested of the right of disposing of it by pledge in security for the payment of his debts; and, in case of a pledge or chattel mortgage, the owner clearly waives the benefit of exemption, so far as the incumbrance extends or is operative.<sup>2</sup>

15. Where, by the terms of a chattel mortgage, the mortgagee has the right to the possession of the property at the maturity of his debt, and having reduced the debt to judgment, he sues out execution, upon which the mortgaged property is sold, the debtor sustains no injury in the right of possession of the property, which would support an action of trespass, even though the chattels thus mortgaged and sold belonged to the enumerated articles exempted by law from execution.<sup>2</sup>

16. *Certain articles absolutely exempt; others by selection.* There are certain enumerated articles which are absolutely exempted from execution, and which the officer is bound at his peril to notice and not take on execution, unless turned out by the debtor by a waiver of his right of exemption; but there are other articles, the exemption of which from execution depends on the *selection* to be made by the debtor.<sup>2</sup> See paragraphs 8 and 9 of Chapter 13.

17. *When selection to be made.* Where the exemption depends on the selection to be made by the debtor, the selection should be made at the time of the levy, if the debtor be present, but, if not present, then it should be made, and notice given to the officer, within a reasonable time thereafter, and before sale; and without such selection the right to the benefit of the exemption does not exist as to those articles which the statute authorizes the debtor to select.<sup>3</sup> But as to exemptions in lieu of homesteads, see next paragraph.

18. *Exemption in lieu of homestead.* Husband and wife living together, a widower living with an unmarried daughter or minor son, every widow and every unmarried female

<sup>1</sup> §§ 11728, 11729.

<sup>2</sup> *Frost v. Shaw*, 3 O. S. 270.

<sup>3</sup> *Frost v. Shaw*, 3 O. S. 270. When an officer levied upon a horse of the debtor, who claimed "the exemptions allowed by law," and they fixed a time and place to meet and select and appraise the property to be exempted, at which the debtor purposely failed to attend, it was held that the debtor, by such failure, waived his right to select and hold exempt the horse so levied on. *Butt v. Green*, 29 O. S. 667.

In an action against an officer for a seizure and sale, on execution, of chattels which are so exempted on such selection, the plaintiff must, in order to sustain the action, establish his right to the exemption, by proof of his selection of the property for the purposes contemplated by the statute. *Frost v. Shaw*, 3 O. S. 270.

having in good faith the care, maintenance, and custody of any minor child or children of a deceased relative, residents of Ohio, and not the owner of a homestead, may, in lieu thereof, hold exempt from levy and sale real or personal property, to be selected by such person, his agent or attorney, at any time before sale, not exceeding five hundred dollars in value, in addition to the amount of chattel property otherwise by law exempted.<sup>1</sup> But as against debt for necessities, only 90 per cent. of such earnings are exempt. No personal property exempt on judgment for purchase price or part thereof.

19. When the family is entitled to a homestead, and neither the husband nor the wife owns one, nor any other property, real or personal, except a single article of personalty of less value than five hundred dollars, which belongs to the husband, and which is levied upon to satisfy his debt, the wife may demand and is entitled to have said article exempted and set off in lieu of homestead.<sup>2</sup>

20. Husband and wife can not each at the same time hold the exemption provided by statute; and when the real estate, occupied as a family homestead, is owned either by the husband or wife, neither can hold exempt from execution the personal property allowed by paragraph 18, above, in lieu of a homestead.<sup>3</sup>

21. Personal property which becomes exempt from execution only when selected by the judgment debtor, is, until such selection be made, subject to levy and sale. There is no presumption of law that a judgment debtor has selected or will claim to hold any particular item of personal property as exempt from execution, in lieu of a homestead, although he may not own any other property from which selections might be made.<sup>4</sup>

<sup>1</sup> § 11738 (93 v. 318). The words "personal property" in this section include credits and moneys selected by the debtor. Credits and moneys selected by the debtor can not be taken and held under an order of attachment or garnishee process. *Chilcote v. Conley*, 36 O. S. 545; and see *Conley v. Chilcote*, 25 O. S. 320. See 50 O. S. 720.

The right given by § 11738 to a debtor, who is the head of a family, and not the owner of a homestead, to hold exempt from levy and sale property therein mentioned, to be selected by him, "at any time before sale," applies as well to property levied on by attachment as by execution; and an order for the sale of the attached property, made in the proceeding in attachment, does not prevent the debtor from exercising his right of selection after the making of such order of sale. *Close v. Sinclair*, 38 O. S. 530.

Where property has been levied on by attachment, and, pending the suit, the debtor assigns all his property for the benefit of creditors, excepting only such as he may lawfully hold exempt from execution, the right of the debtor to select the attached property as exempt from sale is not thereby waived. *Ib.*

When land is sold in an action on a mortgage executed by husband and wife, neither of whom has a homestead, the wife, as against a judgment creditor who is a party, is entitled under this section to the exemption of a sum not exceeding five hundred dollars, out of the surplus after the satisfaction of the mortgage debt, although no demand is made until the sale is confirmed and the money in the hands of the officer for distribution. *McConville v. Lee*, 31 O. S. 447.

<sup>2</sup> *Regan v. Zeeb*, 28 O. S. 483.

<sup>3</sup> *Dwinell v. Edwards*, 23 O. S. 603.

<sup>4</sup> *Carpenter v. Warner*, 38 O. S. 416.



22. If, at the time the debtor applies for the allowance to him of a fund or property in lieu of a homestead, he is the head of a family, but ceases to be so by living alone and separate from his children at the time the fund or property is to be applied, he will not be entitled to the same or the exemptions provided for the head of a family<sup>1</sup>.

23. *When no exemptions are allowed; trespassing animals.* If any horse, mule, ass, neat cattle, hog, sheep, or goat, running at large, breaks into or enters any inclosure, other than inclosures of railroads, the owner of any such animal will be liable to the owner or occupant of such inclosure for all damages occasioned thereby; and the animal so breaking into or entering any inclosure will not be exempted from execution issued on a judgment rendered in any court, or before an officer having jurisdiction, for damages occasioned by such trespass.<sup>2</sup>

24. The members of an insolvent firm are not entitled to the statutory exemptions out of the partnership property after it has been seized in execution by partnership creditors, notwithstanding all the members join in demanding the exemptions.<sup>3</sup>

25. For all fines, costs, and damages assessed against any person, in consequence of the sale of intoxicating liquors, as provided in the chapter of the Revised Statutes relating to such sales, the real estate and personal property of such person, of every kind, without exception or exemption, except to heads of families and widows, as specified in § 11725: and such fines, costs, and damages will be a lien upon such real estate until paid.<sup>4</sup>

<sup>1</sup> See *Cooper v. Cooper*, 24 O. S. 488.

<sup>2</sup> § 5932.

<sup>3</sup> *Gaylord v. Imhoff*, 26 O. S. 317. But where the members of a firm, acting in good faith, dissolve the partnership, and one member sells his interest in the partnership property to the other, the latter will not be deprived of the right to hold such property exempt from the payment of a debt thereafter asserted against him, on the ground that such debt was a partnership debt due at the time of dissolution: nor will the fact that such partners knew the firm to be insolvent, at the time of such dissolution, make any difference. *Mortley v. Flanagan*, 38 O. S. 401.

<sup>4</sup> § 6208. It is evident that some words have been omitted, or other mistake has been made by the legislature as to this section.—[Ed.]



## CHAPTER 13.

## EXECUTION, CONTINUED—WHAT PROPERTY OFFICER MAY TAKE ON EXECUTION; HOW, WHERE, ETC.

1. *Property generally is divided into two great classes, called real estate, or realty, and personal property, or personalty, also called chattels.*

2. *Can not levy on realty.* Generally speaking, magistrates have no jurisdiction in actions in which the title to real estate may in any way be drawn in question, except actions for trespass on real estate;<sup>1</sup> and therefore constables and marshals have no right to levy an execution on real estate.

3. *Realty consists of what.* What is real estate and what is personal property, therefore, becomes an important question, not in all cases easily answered. Lands and lots are realty. So are permanent structures thereon, such as factories, houses, stables, and other usual out-houses, etc. So are all *fixtures* in and to buildings; that is, engines, boilers, machinery, etc., so built into or fastened to any building as not to be removable without injury to the building, and appropriated to the use or purpose of the building or land with which they are connected.<sup>2</sup> Temporary sheds or buildings

<sup>1</sup> See § 10232 (88 v. 262); and for fuller discussion of this than space will here permit, see Chap. 2, and works on Real Estate.

<sup>2</sup> "The law of fixtures is of a shifting character, and singularly incapable of any accurate and exhaustive generalization. As it grew out of a long series of decisions, each of which was largely controlled by its own peculiar circumstances, the exceptions, qualifications, and limitations are so numerous as to impair very greatly the value of any general rule that might be deduced from the tenor of the judicial *dicta* on the subject. There are two principles, however, that may be considered as settled. One is, that where the parties have shown a positive intention to make an article a fixture, it *is* a fixture; and where it is manifestly the design of the parties having the control of the subject, that an object suitable in character for a fixture, and appropriately placed, shall not be a fixture, it is *not* a fixture. The other rule is, that, generally, an article to be a fixture, must be attached to the land." Murfree on Sheriffs, § 728. See same work, all of Chap. 16; 2 Kent's Com. 343; Williams on Real Property, etc.

"In general, if a tenant make permanent improvements upon rented land, such as a dwelling-house or out-buildings, they become the property of the landlord and a part of the realty, and the tenant can not remove them, except by consent of his landlord. If, however, a building, shop, or machine be erected by a tenant for the purpose of carrying on his trade, it is, in general, considered his chattel

merely resting on the surface of the ground, and not on walls or pillars set into the ground, engines, boilers, gas fixtures, etc., placed by a tenant on rented land or in a rented building, and easily detachable therefrom without injury thereto, are generally personal property belonging to the tenant; but, if not so detachable, belong generally to the landlord.<sup>1</sup> Doors put into place, shelves fastened to the wall, materials used in enlarging or repairing a building, etc., belong to the building's owner as a part thereof, no matter by whom put there. Fences, even though made of loose rails, are part of the realty, no matter by whom made or furnished, but not so the rails, posts, boards, wire, nails, etc., before they actually become a part of the fence. Spontaneous growing products of land, such as trees, grasses, including timothy, clover, etc., while standing or uncut, are part of the realty, but, when cut, become timber, hay, etc., and are personal property. Fruit on the tree is part of the realty, but when plucked or fallen therefrom, or when previously sold by the owner, is personal property. Gravel, minerals, petroleum, etc., while in position where placed by nature, are part of the land, but, when removed therefrom, become personalty.<sup>2</sup>

4. But growing crops produced by annual planting, such as corn, rye, wheat, etc., are subject to levy and sale on execution issued by a magistrate,<sup>3</sup> even if a sheriff or other

property, which he may remove, and which, therefore, may be levied upon as his personal property. Thus, it has been held, that a house to carry on the business of manufacturing varnish; or vats to manufacture soap; or sugar-kettles set in a furnace to make sugar; or a cider-mill and press; steam-engines or threshing-machines fixed to the land by means of a building; carding-machines and looms; kilns and sheds for making brick;—these and the like, when erected by a tenant at his own expense and for his own use, may be removed by him at or before the expiration of his lease; and, consequently, may be levied upon as his chattels." Swan's Treatise, Chap. 25, § 6. See authorities above mentioned, and cases there cited.

<sup>1</sup> See preceding notes, and authorities there cited. The machinery of a manufactory that supplies the motive power, as the engine, boiler, and their usual attachments, as contradistinguished from that propelled by it, where permanently annexed to foundations resting upon the freehold, is generally held to be a fixture, though susceptible of being removed without any material injury to the same or the freehold; and, whilst by the agreement of the parties, the property may be made to preserve the character of personalty, yet, when it is so attached, that, but for the agreement, it would be a fixture, such agreement will be of no avail against a subsequent mortgagee of the realty without notice of it; nor will the filing of a mortgage upon it as chattel property, duly executed and delivered as such, of itself constitute such notice. *Case Manufacturing Co. v. Garven*, 45 O. S. 289.

As between an execution creditor and a mortgagee [or owner] of the realty, chandeliers and other gas fixtures are not fixtures, but personalty; so of a mantel-mirror held to the wall by iron clasps; but book-cases, which, if removed, would also remove part of the wash-board around the floor, or a hat-rack built into the room, are part of the realty. *Insurance Co. v. Kneisley*, 13 Bull. 437.

<sup>2</sup> See same authorities cited in notes 1 and 2 on preceding page.

<sup>3</sup> 2 Johns. 218; 17 Johns. 128.

officer has previously levied on the real estate on which such crops are growing, if this latter officer did not specifically levy on the growing crop also.<sup>1</sup> If such crops are levied on and sold while still unripe, the purchaser may take care of and gather them,<sup>2</sup> or the levying officer may be directed by the judgment creditor to wait till the crop is ripe, and then sell them under a new order from the magistrate.<sup>3</sup>

5. *The general rule* is that the officer, under a writ of execution, may levy on whatever property he can find belonging to the execution debtor. But there are many exceptions to this, as will be seen from the following paragraphs, as well as from the preceding chapter.

6. *Rights, etc., of landlord or tenant in crops, etc., protected.* In all cases where any lands may have been let, reserving rent in kind, and when the crops or emblements growing or grown thereon, are levied on or attached by virtue of any execution, attachment, or other process, against the landlord or tenant, the interest of such landlord or tenant against whom such process was not issued will not be affected thereby; but they may be sold, subject to the claim or interest of the landlord or tenant against whom such process did not issue.<sup>4</sup>

7. A tenant's interest in land under a lease to him, unless the lease be renewable forever, is *personalty*, and may be levied on and sold under an execution issued by a magistrate.<sup>5</sup>

8. *Property exempt by selection liable till selected.* Personal property which becomes exempt from execution only when selected by the judgment debtor is, until such selection be made, subject to levy and sale.<sup>6</sup>

9. No rule is better settled than this: That these statutory rights, in cases where the exemption depends upon selection or demand, as in cases like this, may be waived expressly in terms, or impliedly, by failing to assert the right or make the demand at the proper time, and the right can not be negotiated or transferred. The general right is statutory; the particular right is strictly personal, and in practice becomes simply a personal privilege, to be asserted

<sup>1</sup> Cassilly v. Rhodes, 12 O. 88; Houts v. Showalter, 10 O. S. 124.

<sup>2</sup> 2 Dana, 205; 7 Mass. 34.

<sup>3</sup> 2 Johns. 418.

<sup>4</sup> § 10433. A landlord leasing to a cropper for a year, reserving, as rent, a part of the grain, has a lien upon the growing crop, and the entire crop can not be removed by the tenant, or those acting under him, until the rent is provided for or satisfied. Hence, a constable holding an execution against such cropper would not be authorized to remove the crop until the landlord was satisfied. He could levy on the cropper's interest and sell it, and the purchaser, after setting apart or providing for the landlord's share, would take the residue. Case v. Hart, 11 O. 364; Swan's Treatise, Chap. 16, § 6.

<sup>5</sup> Lessee v. Hall, 3 O. 449.

<sup>6</sup> Carpenter v. Warner, 38 O. S. 416.



or not at the will of the person in whose favor the right exists.<sup>1</sup> See paragraphs 16 and 17, Chapter 12.

10. After an execution is issued by a magistrate, any person owing the judgment debtor may pay his debt, or enough of it to satisfy the execution, to the officer holding the execution, and such officer's receipt therefor will be a sufficient discharge of the amount so paid.<sup>2</sup>

11. Goods in the hands of a common carrier, pawnee, liveryman, etc., who does not own them, but who has a lien on them and therefore a right to hold them, can not be levied on for a debt of such lien-holder.<sup>3</sup> Nor can such such goods be levied on for a debt of the owner, without such lien-holder's consent, unless such lien is first discharged.<sup>4</sup>

12. *Goods mortgaged* and by the terms of the mortgage left for a definite time with the mortgagor, who may in the meantime make some use of them, may be levied on and the mortgagor's interest therein sold under an execution against him. If such property be replevied by the mortgagee and sold, the proceeds would be applied first toward satisfying the mortgage, if valid, and next toward satisfying the execution.<sup>5</sup> But if such goods are put into the possession of the mortgagee to remain till the debt they secure is paid, they are his till such payment, and can not be levied on under an execution against the mortgagor; and if such payment be not made when specified in the mortgage, they become absolutely the mortgagee's, and may then, but no sooner, be levied on as his property.<sup>6</sup> All this applies to an attachment as well as an execution.<sup>7</sup>

13. Where the amount of such mortgages exceeds the entire value of the mortgaged property, only nominal damages can be recovered against the officer for refusing to levy

<sup>1</sup> Conley v. Chilcote, 25 O. S. 324.

<sup>2</sup> Hallanan v. Crow, 15 O. S. 176; §§ 10490, 11780.

<sup>3</sup> 6 Har. & Johns. 264.

<sup>4</sup> 4 Mason, 464; 4 Wend. 292.

<sup>5</sup> See Curd v. Wunder, 5 O. S. 93; Coe v. Bank, 10 O. S. 412; Carty v. Fenstermaker, 14 O. S. 457; Coopers v. Wolf, 15 O. S. 523; Ashley v. Wright, 19 O. S. 291; Houk v. Condon, 40 O. S. 569.

<sup>6</sup> 9 Wend. 258; 4 Cow. 491.

<sup>7</sup> The interest of the mortgagor in chattel property mortgaged, of which he is in possession, after condition broken, may be attached, and the levy of the order of attachment and seizure of the property, by the officer charged with the execution of the order, creates a lien in favor of the attaching creditor upon the interest of such mortgagor. Carty v. Fenstermaker, 14 O. S. 457.

The subsequent recovery, by the mortgagee of the property, in an action of replevin, from the officer holding it under the attachment, does not divest such lien; and the attaching creditor may subject the surplus of the proceeds remaining after satisfaction of the mortgage, to the payment of the judgment recovered in the attachment suit, although, after the levy of the attachment, and before the creditor commenced proceedings to subject such surplus, the mortgagor had executed an assignment to the mortgagee of such surplus. *Ib.*



upon and sell the property on executions against the defendant.<sup>1</sup>

14. *As to chattels sold conditionally.* Personal property may be sold and delivered to the purchaser, to be paid for in installments or otherwise at some future time, on condition, however, that it shall not become really his until paid for in full; and if the written instrument evidencing such sale is filed with the proper township or county officer, as required by law in case of such instruments and of chattel mortgages, such a transaction is lawful, and the purchaser acquires no interest in such chattels that can be seized on execution till they are fully paid for, even if the execution creditor offers to pay the balance due thereon to the seller.<sup>2</sup>

15. *As to goods obtained by false pretenses, etc.* If one person (say A.) obtained goods from another person (say B.) by fraud, false pretenses or representations, B. may retake them from A., or from an officer who has seized them under an execution against A. But if A. had, after so obtaining them, sold them to a third person (say C.), who knew nothing about the fraud or false representations, they could not be taken from C. under an execution against A., but they could be under one against C. But they could be taken from C. under an execution against B., if C. knew of this fraud or false representation. In any case, however, the levy would be good, if B. did not interfere.<sup>3</sup>

16. *Second levy on goods already seized.* Generally, goods seized under an execution by one officer can not be taken from him under another execution by another officer, unless the goods are held fraudulently under the first execution.<sup>4</sup> But when a second execution against the same debtor is given to the same officer who holds the first one, he need not do more than indorse on the second execution as though it had been levied, on the day he received it.<sup>5</sup> This is sometimes called a "paper levy," as in paragraph 2, Chapter 14.

17. *When levies may be made subject to prior levies.* Any constable or other officer may, and is required upon demand of

<sup>1</sup> Clark v. Wolf, 15 O. S. 523.

<sup>2</sup> See Sage v. Sleutz, 23 O. S. 1; Sanders v. Keber, 28 O. S. 630; §§ 7880-7882, Giaque's ed. R. S. As to chattel mortgages, see §§ 8560-8572.

<sup>3</sup> See 7 Taunt. 89; 2 Mason, 236; 6 Mete. 68; 1 Hill, 312; 12 Pick. 312; 13 Wend. 570; 16 Conn. 81.

<sup>4</sup> 10 Pet. 400; 5 Mass. 271; 8 B. & C. 132; Ib. 660.

<sup>5</sup> Where the property on which the officer levies a particular writ is in his possession under a former one, a second seizure need not, and in fact can not, be made; the seizure as to such subsequent writ is in law effected by simply indorsing a levy upon it, and such levy will take effect from the receipt of the writ by the officer. Where the property is in his custody under the former writ, such custody supports the return of a levy made under the second writ; but if it is not, and no seizure is in fact made under the second writ, the latter one is no more effectual than the former one. Root v. Railroad, 45 O. S. 222-231.

the execution creditor, to levy any execution in his hands upon personal property already levied upon, and in the custody of the sheriff or other officer, subject to prior levies; and such sheriff or other officer or person having charge of such property must afford such officer making any subsequent levy an opportunity to make such levy and take a schedule of the property, and such subsequent levy will create a lien upon such property or its proceeds, subject to prior levies. But such officer so first levying retains possession of said personal property, and causes the same to be sold as in other cases; and the court issuing the writ first levied must determine all questions growing out of such levy or levies.<sup>1</sup>

18. *On property in plaintiff's own hands.* A seller of merchandise, possession of which he holds by the contract until it be paid for, and which the purchaser does not pay for as agreed, may, after getting judgment for the contract price, levy execution on the merchandise as the property of the vendee.<sup>2</sup>

19. *The execution debtor's goods in the hands of a third person,* who has no interest or property in such goods, must be seized by the officer, if he learns, or by reasonable diligence he could learn, that they belonged to the debtor, or he will be liable to the execution creditor for such neglect; and upon direction to seize, the officer is not excused by mere suspicion that the property designated is not that of the defendant; he must ascertain the facts and act accordingly.<sup>3</sup>

20. *Seizure of goods not belonging to the debtor.* On the other hand, if he believes that such goods belong to the execution debtor, and he seizes them, when in fact they belong to another, the officer is liable as a trespasser to the owner of the goods.<sup>3</sup>

21. He is, therefore, at times compelled to choose which one of these two dangers he will incur. However, in such cases, he may demand indemnity from the creditor who insists on his seizing property of doubtful ownership.<sup>3</sup>

22. In such a case which came before our supreme court on the question of the right of such a third person to defend by force his property which a constable had levied on as the property of the execution creditor, it was stated by the court in effect that an officer in good faith seizing such property of an outsider, which the officer had reason to believe belonged to the execution creditor, though in fact it did not, was doing his duty; that such an officer "is not infallible, nor does the law expect him to be so; it only demands that he shall be honest, and not wantonly trample

<sup>1</sup> § 10435.

<sup>2</sup> *Rhodes v. Mooney*, 43 O. S. 421, 425.

<sup>3</sup> See *Binsmore on Sheriffs, Constables, etc.*; *Swan's Treatise*, Chap. 25, § 5.

on the rights of others.” And the court decided that, “Whenever the question of property is so far doubtful that the creditor and officer may be supposed to act, and do in truth act, without wantonness, carelessness, or oppression, but in good faith, and on reasonable grounds for believing the property to be that of the debtor, the owner has no right to resist the execution or attachment by a breach of the peace.”<sup>1</sup>

23. *Promissory notes, accounts, judgments, and such other like things as are called, in the language of the law, choses in action*, meaning such property as can only be recovered or enforced by suit in law, can not be levied on under an execution.<sup>2</sup>

24. *Death of defendant*. If the defendant die after execution is sued out and levied, the execution proceeds as if death had not taken place. If the defendant die after execution sued out, and before levy made, the execution can not proceed.<sup>3</sup>

25. *Entering dwellings, breaking doors, etc., to make a levy*. The officer has exactly the same right to enter dwellings, break doors, etc., for the purpose of making a levy under a writ of execution that he has for the purpose of making an arrest in a civil case. See, as to this, Chapter 24.

<sup>1</sup> *Faris v. State*, 3 O. S. 159, 168. Whatever may formerly and elsewhere have been the necessity for resistance to an officer, in certain cases, there is, at this day, and in this country, no want of the peaceful protection of property against a seizure, made in good faith by one clothed with public power, and subject to public responsibility. Nor is there any want of quiet, safe, and sure means to recover it when so taken. *Ib.*

<sup>2</sup> See 23 Iowa, 104; *Murfree on Sheriffs*. § 459, and cases there cited.

<sup>3</sup> *Massie v. Long*, 2 O. 287; *Cartney v. Reed*, 5 O. 221.



## CHAPTER 14.

## EXECUTION, CONTINUED—LEVY, WHAT CONSTITUTES A, AND WHAT NOT; CARE AND CUSTODY OF GOODS LEVIED ON; REDELIVERY BOND, ETC.

1. *What constitutes a levy; effect of leaving seized goods with judgment debtor.* In order to make a valid levy, the officer must actually take possession of the goods, either by taking hold of them with his hands, or by otherwise getting them into his possession to such an extent that they are in his power and control. But an actual seizure does not necessarily imply an actual touching of the goods, but merely such action as, in effect, puts them under the dominion of the law. A claim of dominion, with the power to exercise it, an intention being indicated to interfere with the goods, under pretense of right and authority derived from the execution, is a levy. The essence of the levy is, getting power over the property, such as will enable him to sell it at the proper time and place; and this he gets whenever he gets the property into his own hands or into the hands of another as his agent. In order to make a valid levy on goods and chattels, the officer must have them within his power and control, or at least within his view; and if he then makes a levy, it will be good if followed up afterward within a reasonable time, by his taking possession in such a manner as to apprise every body of the fact of its having been taken in execution. Such a levy, to be valid against later levies, and against later purchase or mortgage, must be actual and with continued manual seizure by the officer, when seizure is practicable; or if the property is within view or power of control, by making such distinct, open, unequivocal assertion of dominion over it as the nature and situation of the property and circumstances will admit of, or as the judgment debtor may recognize and submit to, and constituting such an interference with the owner's possession, either actual or constructive, as that the officer levying could be sued for trespass for, were he not protected by the writ under which he is acting. The making of an inventory, though often desirable, is not necessary to constitute a valid levy upon personal property. But the levy should be public, open, and unequivocal and nothing should be done by the officer to conceal the transaction. A secret levy on



goods left on the premises in the possession of the defendant, and no act done to give notoriety to it, is bad.<sup>1</sup>

2. To illustrate: where an officer, under promise of indemnity for his neglect, and to enable the debtor to raise money to satisfy the execution, by the prosecution of his business, merely indorses a paper levy on the execution in his hands, and allows the debtor to retain absolute possession and control of the property, with power of use and sale in the usual course of business, such levy is void, and the goods and chattels are subject to seizure in execution in favor of other creditors.<sup>2</sup>

3. Where property easily removable (for example, a stallion) is seized in execution, but left in the possession and use of the defendant, a delay for an unreasonable time to offer said property for sale, with the sanction and assent of the plaintiff, will have the effect of postponing such levy to one made upon a later execution. The question whether the delay, if any, was reasonable or unreasonable, depends on all the circumstances surrounding the parties and the property seized in execution.<sup>3</sup> If the officer go with the defendant into the field to levy on animals which are there, and, in view of them, make a note of the levy on the back of the execution, this will constitute a good levy. But if the officer, instead of going to the field, had, at the house of the defendant, or elsewhere, made a memorandum of a levy upon animals in the field, not within his view or under his control, and then left, without taking any further steps to complete the levy, these acts would not constitute a levy. If, however, the levy was thus made by the assent of the judgment debtor, he could not afterward object to the regularity of the levy; but such assent would not preclude other judgment creditors from treating the levy as invalid.<sup>4</sup>

<sup>1</sup> See *Pugh v. Calloway*, 10 O. S. 488-495; *Minor v. Smith*, 13 O. S. 79, 82, 83; *Gibson v. Bank*, 11 O. S. 311; *Murphy v. Swadener*, 33 O. S. 85, 94, and authorities there cited.

<sup>2</sup> *Murphy v. Swadener*, 33 O. S. 85.

<sup>3</sup> *Acton v. Knowles*, 14 O. S. 18. A sheriff afterward levying on the same property, the constable has, as against him, the right to the immediate possession, and may sustain an action without a demand for the redelivery of the property, and in such action, to make out a case, calling on the sheriff to establish a better right to the property, the constable is not bound to produce in evidence the judgments upon which the executions levied were founded. That a prior levy was excessive does not, in itself, render it invalid as against a subsequent levy upon the same property. See *Ib.*

<sup>4</sup> *Swan's Treatise*, Ch. 25, § 8, and cases there cited.

Where the officer went into the house of the judgment debtor, and told him that he came to levy on his goods, and laying his hands on a table, said, "I take this table," then locked up the execution in the drawer of the table and took the key, and went away without any further steps to take the control of the property, it was held that there was no claim on any of the goods by such a levy; and that the officer had neither actual nor constructive possession after he left them.

4. An officer with an execution against a church corporation, entered the church building on a week-day, while the sexton was in the bell-room ringing the bell, and there, in the presence of no one, but in view of the organ in the gallery, entered on the back of the execution a levy on the organ, and then retired without seeing the sexton, who was unaware of his presence, and who continued in control of the building and its contents, and in possession of the keys, as before; and before the disclosure of such levy either to the public or to the officers of the church, a chattel mortgage of the organ was duly made, and by a *bona fide* creditor of the church. The supreme court, in deciding the case, said that this levy was wanting in the requirements of openness, publicity, and reasonable assertion of dominion; that, the organ being probably heavy and not being easy to remove, no manual possession was necessary; that it was in view of the officer, and sufficiently within his power of control; but that his proceedings were secret, and that he did not give his acts a reasonable notoriety; and that therefore the mortgage was ahead of the levy as a lien on the organ. His delicacy for the feelings of the congregation about to assemble for worship, and which may have had something to do with his action, was commended by the court, but it also remarked that an officer must not allow his consideration for the feelings of debtors to endanger the rights of third persons.<sup>1</sup>

5. Where an actual and valid levy of an execution has been made upon personal property, the property so levied upon is, in contemplation of law, in the custody of the officer, and if it is returned to, or left with, the judgment debtor, such levy is not for that reason alone void as against subsequent levies. Whether such levy is valid, or becomes fraudulent and void as against subsequent levies, is a question of fact depending on the character of the property and all the surrounding circumstances of the case.<sup>2</sup>

6. Where a constable levies on property and leaves it in possession of the debtor (taking security for his own indemnity), the possession of the debtor is to be regarded as the possession of the constable.<sup>2</sup>

7. When goods are so left by the officer in the possession of the judgment debtor, the officer so leaving them is responsible for the goods to the judgment creditor.<sup>3</sup> When so left, with or without security, the officer may, after the expiration of the time limited for their re-delivery, retake them, wherever he can find them, if he can regain possession without force or terror, or he may maintain an action for their recovery.<sup>4</sup>

8. *Constable may take redelivery bond.* Any constable hav-

<sup>1</sup> *Minor v. Smith*, 13 O. S. 79; *Ib.* 84.

<sup>2</sup> *Acton v. Knowles*, 14 O. S. 18.

ing levied on goods and chattels, which he permits the party against whom the execution issued to retain possession of, is authorized to take such security for his own indemnity as he may require, that such property shall be delivered at the time and place appointed for its sale.<sup>1</sup>

9. The officer should not leave the property in the possession of the execution debtor unless he is willing to take the risk of paying to the execution creditor the value of such property or the amount of the execution. The bond provided for above is to reimburse him, if he so has to pay.<sup>2</sup> Read paragraphs 2 to 7, above.

10-15. *Form of redelivery bond.*

Know all men by these presents, that we, V. W. and X. Y., of Springfield township, in the county of Hamilton, in the State of Ohio, are bound unto A. B., constable of the township of Springfield, in the county aforesaid, in the sum of — dollars, for the payment of which we hereby jointly and severally bind ourselves.

Dated this — day of —, 19—.

The condition of this obligation is such, that, whereas, the above named A. B., as constable of the township and county aforesaid, by virtue of an execution now in his hands, duly issued in the action of E. F. against G. H., by C. D., a justice of the peace in and for the township and county aforesaid, on the — day of —, A. D. 19—, commanding him to make out of the goods and chattels of said G. H. the sum of — dollars debt, and also — dollars costs of suit, has levied upon the following described property of said G. H., to wit: [*describe the property, substantially as in the inventory, or as the facts may require*]; and which said property the said A. B., constable, left in the possession of G. H. [*or state in whose possession*], at the request of the above obligors, at the time of the execution of this writing obligatory.

Now, if the said G. H. shall redeliver said property to the said A. B., constable, or any other officer holding an execution or order for the sale of the same in said action, at the time and place appointed by said A. B., or said other officer, according to law, then this obligation shall be void; otherwise it shall remain in full force.

[Witnesses, if any, sign here.

They are not necessary.]

V. W.

X. Y.

16. *Insufficient and excessive levy.* In making a levy, the officer must exercise a prudent, reasonable, and cautious

<sup>1</sup> § 10432. Where the constable has taken security for his own indemnity, and leaves the property levied upon in the possession of the debtor, the debtor's possession is to be regarded as the possession of constable, and as against a sheriff who afterward levies upon the property, the constable has the right to the immediate possession, and may maintain an action therefor, without a demand for the redelivery of the property. *Pugh v. Calloway*, 10 O. S. 488.

<sup>2</sup> See Swan's Treatise, Ch. 25, § 11.



discretion, and take into his possession an amount of property sufficient, when sold, in all human probability, and making due allowance for the sacrifices incident to forced sales, to realize a sum that will pay off the execution. If he fails to do this, he will be liable to the plaintiff for having made an insufficient levy. He may, out of abundant caution, or for other good reason, make an additional levy at any time before sale; but this rule must be construed reasonably; it does not authorize oppression in office, which may be committed by an excessive levy. He must use discretion, the presumptions of law being in his favor. If, having it within his power to secure a debt, from timidity, carelessness, or a worse motive, he makes an insufficient levy, he is liable for the deficiency; if from willfulness, malice, indifference to the rights of others, pride of place, or other unworthy motive, he makes an excessive levy, he is liable to the defendant or other party interested. It is the officer's duty to levy on *enough* property to satisfy his process, and he can, in doubtful cases, only rely on his judgment, and should always give the plaintiff the benefit of any doubt he may have as to the real value of the property. A levy can not be said to be excessive, unless the difference between the value of the property and the amount of the debt is manifest and glaring. The same principles govern, in this respect, attachments and executions.<sup>1</sup>

<sup>1</sup> See Murfree on Sheriffs, §§ 524-7, and cases there cited.

What is an insufficient, and what an excessive levy, are questions of fact dependent upon the circumstances of each particular case. The following rules may aid: The value of the property as appraised by the appraisers will not protect the officer from an insufficient levy. The true standard is the value in current money at the time of levy; the officer will not be liable for depreciation between time of levy and sale, if when the levy was made, it was undoubtedly adequate. If the officer is guilty of no fraud or neglect, the inadequacy of the price brought at the sale will not of itself be enough to charge him with an inadequate levy, and if there is great uncertainty at the time of levy as to the value of the property seized, and it turns out later that the value was greatly in excess of the debt sued for, it does not follow that the levy was excessive. *Ib.*, § 525.

In a Michigan case (50 Mich. 355) property worth \$800 was seized under an attachment for \$68.00; the officer refused to set apart to the defendant her exemptions; the attachment suit failed, and the property was wholly lost to the defendant. In a suit against the officer, the court (Cooley, J.) said: "The levy itself was grossly excessive; and if the plaintiff had been allowed all the exemptions she claimed, there would have been ample property to secure the pretended debt. It can not be tolerated that such a seizure should go unrebuked. The officer is, or should be, a minister of justice, not of oppression; and he should execute every writ put into his hands in such a manner as to do as little mischief to the debtor as possible. To seize and hold the whole of a debtor's property, so as to preclude the debtor not only from engaging in his customary business, but even from keeping house, when the enforcement of his process does not at all require it, is a proceeding which we can not think the defendant himself would have failed to censure, if it had come to his personal knowledge. And even if the seizure had been justifiable, the circumstances were such as to demand from the officer prompt action



17. *When levy satisfies the debt.* A levy on enough property to satisfy the debt, if it can be taken from the possession of the defendant, is a satisfaction of the debt. After such a levy has been made, if the officer wastes the goods, or fails to return the execution; or neglects to sell them; or misapplies the money arising from their sale; or the goods, by fault of the officer, or of the person with whom he has left them, have not been applied to the payment of the judgment, the judgment creditor must look to the officer for payment. He can not sue out a fresh execution; the judgment, as between him and the judgment debtor, is satisfied. If, however, goods not sufficient to satisfy the execution are seized, the judgment creditor can, while the levy remains in force, look to the officer only for their value or proceeds, and the execution, to that extent only, is satisfied. But if the debtor never lost possession of the goods by the levy, or if the officer restored the property to the debtor, or if the levy was abandoned at the debtor's request, or for his benefit, or was overreached by a prior lien, or if the property is claimed by a third person and adjudged to him after trial, then it is not a discharge of the debt.<sup>1</sup>

18. *As to goods taken from officer by legal process.* An officer, from whose legal custody goods have been seized, may repossess himself of them, even when in the hands of another officer who has afterward attached or levied upon them under a valid process.<sup>2</sup> Formerly, if goods so levied upon were replevied from the officer, and a replevin bond given therefor, such officer could not repossess himself of them, and they were no longer the judgment debtor's property, but belonged to the one who gave the replevin bond.<sup>2</sup> But the defendant in a replevin suit may now give a replevin bond, and repossess himself of the property, and abide the judgment declaring who is actually entitled to the possession of the goods.<sup>3</sup>

19. When goods are replevied from the officer, he is not required to litigate the matter, but should notify the judgment creditor or his attorney as to such replevin.<sup>2</sup>

20. *In what order levied.* The officer must levy executions in the order in which they are delivered to him.<sup>4</sup>

in setting off the exemptions, for every day's delay was an unnecessary injury."

In a Missouri case (52 Mo. 518) an officer levied an execution for \$109 on a steamboat worth \$40,000, and detained it several days; and it turned out that the execution creditor had no interest in the boat. Damages of \$2,500 were adjudged against the officer.

There must be a gross abuse of discretion by the officer, to render him liable for an excessive levy, indicating an intent to oppress the debtor. Swan's Treatise, Ch. 15, § 8.

<sup>1</sup> Murfree on Sheriffs, § 529; Swan's Treatise, Ch. 15, § 9, and cases there cited.

<sup>2</sup> See Swan's Treatise, Ch. 15, § 9. <sup>3</sup> See § 10465, as am. 88 v. 275.

<sup>4</sup> Where a judgment creditor placed an execution in the hands of the sheriff, stating that he did not know where there was property to

21. *When two or more executions* are issued upon different judgments against the same debtor, the one first levied will be the first lien, *unless* they were delivered to the same officer on the same day, when neither one will have preference; and the officer must levy them on the same property, and the money made must be apportioned ratably to the different judgments.<sup>1</sup>

22. Formerly, when one officer had levied an execution on property, another officer could not levy another execution on the same property.<sup>1</sup> But see paragraph 17 of Chapter 13.

be levied on, but then another execution would be put into his hands, with directions where to levy, and requiring the sheriff to levy the first execution first; and afterward another judgment creditor, who, by expenditure of trouble, and employing a detective, had ascertained where there was property of the debtor, placed his execution in the sheriff's hands, but learning of the former execution, refused to disclose the whereabouts of the property unless he could preserve the benefit of his labor by having his execution levied first, and thereupon the sheriff acceded and levied such execution first the sheriff is liable to the earlier execution creditor, the property being insufficient to satisfy both. *Weber v. King*, 7 Bull. 148.

<sup>1</sup> See Swan's Treatise, Ch. 15, § 10.

## CHAPTER 15.

## EXECUTION CONTINUED—LIABILITIES AND REMEDIES OF OFFICER AS TO EXECUTION ISSUED TO HIM, ETC.

1. *When officer is liable on an execution in his hands.* A constable is liable to the party in whose favor an execution issued to him for the amount thereof, in the following cases: *First.* Where he suffers thirty days to elapse without making a true return of the execution to the justice, and paying to him, or to the party entitled, the money collected thereon by him. *Second.* Where he willfully and carelessly omits to levy on property within thirty days, or, if the defendant be liable to be imprisoned, then to arrest and commit him to the jail of the county within thirty days.<sup>1</sup>

2. *As to searching for goods to levy on.* The mere fact that the debtor had property subject to levy will not, in general, be sufficient to make a constable liable for neglect. Other facts and circumstances must be proved, from which it may appear expressly or presumptively, that if the officer had made any reasonable inquiries, or used slight diligence, he could have collected the money from the property of the execution debtor.<sup>2</sup>

3. If a judgment debtor have property liable to seizure on the execution, openly kept by him, so that, by going to his residence, the constable could levy upon it, and the constable knows the defendant and where he resides, or knows the defendant and makes no inquiry to ascertain his residence, and the constable makes no levy, and shows no exertion on his part to make a levy, he has willfully and carelessly omitted to make a levy. Mere inquiry of the execution debtor for goods is not a search.<sup>3</sup>

4. *The rule of diligence* has been stated as follows: "On receipt of the execution, in the absence of specific instructions, the officer must proceed with reasonable celerity to seize the property of the debtor, if he knows, or by reasonable efforts can ascertain, that such debtor has property in his bailiwick liable to execution. The officer must do this as soon after the process comes into his hands as the nature of the case will admit. If he fails to execute the process

<sup>1</sup> § 10422.<sup>2</sup> Swan's Treatise, Chap. 15, § 5.<sup>3</sup> Swan's Treatise, Chap. 25, § 9; 1 J. J. Marsh. 550; 5 Wend. 309.

within an apparently reasonable time, the burden is upon him to show, by averment and proof, that the delay was not in fact unreasonable. Failing in this, he must respond in damages to the party injured by his negligence."<sup>1</sup>

5. The officer is not responsible for the loss of good happening by fire, theft, embezzlement, natural decay, or the like. He must act in good faith, and is responsible for his own gross negligence and fraud, and the gross negligence and fraud of his servants and agents with whom he may leave the goods. The common care which men of ordinary prudence exercise in keeping and preserving property of the like kind, he is bound to exercise, and no more; and if, notwithstanding such care, the goods deteriorate in value, or decay, or perish, the loss must be borne by the judgment debtor.<sup>2</sup>

6. *Excuse of constable for failure to execute writ; other writ to issue.* In cases where the constable makes it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by law, or otherwise prevented from making the whole of the money therein required to be made, and makes return to that effect to the justice who issued it, such justice is authorized and required to issue further process of execution for the amount or balance remaining unsatisfied. This new writ must be served and returned, in all respects, as other executions.<sup>3</sup>

7. *Pay for keeping live stock levied on.* When any cattle or other live stock are taken in execution, it is the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment, whereon such execution issued, to allow the constable, for keeping the same, a reasonable compensation, to be taxed and collected as other costs in the suit.<sup>4</sup>

8. *Remedies of officer sued for seizure, etc., of wrong property.* Whenever any officer, having an execution issued to him upon any judgment, shall, in good faith, have levied such execution upon any property, not subject thereto, and shall have sold said property, and applied the proceeds in satis-

<sup>1</sup> Murfree on Sheriffs, § 565, citing *Elmore v. Hill*, 51 Wis. 365. In that case, a sheriff was held liable who waited four days on a corporation which had promised to arrange to pay the execution in his hands, but which, within that time, made an assignment of property which that officer could have found and seized.

If it be shown that the debtor was in possession of property not exempt from execution, and that the officer knew it, he will, in general, be held responsible, and the burden falls upon him to show that the property was not owned by the defendant, or was otherwise not subject to execution, or that he did exert himself so far as not to be chargeable with willful carelessness in omitting to make a levy. Swan's Treatise, Chap. 15, § 5.

<sup>2</sup> Story on Bail. 130; Swan's Treatise, Chap. 15, § 9.

<sup>3</sup> § 10434.

<sup>4</sup> § 10429.



faction, or part satisfaction, of said judgment, and a recovery of the value of said property shall have been had against him in any court for so doing, upon having paid said value, said officer, on motion before the court having control of said judgment (it being shown to the court that due notice of said motion has been given to the defendant named in said execution), may have the satisfaction of said judgment or decree, so made from the sale of such property, vacated; and execution must issue for the same, for the use of said officer against whom such recovery has been so had, the same as if such levy and sale had not been made.<sup>1</sup>

9. The statute provides in effect that when an officer is sued for the recovery of personal property taken by him on execution, or for the proceeds of such property sold by him, he may show to the court the writ or process under which he acted, with his affidavit that the property was taken or sold by him under said process; and the court may then make an order for the safe-keeping, or for the payment, or deposit in court, or delivery of the said property or proceeds to such person as it may direct, and also order the person in whose favor the writ was issued to appear in a reasonable time, and maintain or relinquish his claim to said property or proceeds. If such person, being duly served with a copy of said order, fails to appear, the court may declare him barred of all claim to said property or proceeds. If he appears, he must be allowed to substitute himself as defendant in the suit in place of the officer who will then be discharged from all liability to either plaintiff or defendant in said suit, in respect to the said property or proceeds, as soon as he complies with the order of the court for the payment, deposit, or delivery thereof.<sup>2</sup>

10. The statute also provides that, in an action against an officer for the recovery of property taken under an execution, or attachment, the court may, upon application of the defendant, or of the party in whose favor the execution or attachment issued, permit the latter to be substituted as the defendant in such action, security for costs having been given; or the court may order such substitution to be made on application of the officer.<sup>3</sup>

11-15. *The form of the affidavit mentioned above may be as follows:*

State of Ohio, — County, ss:

A. B., being duly sworn, says that he, as constable of — township, — county, Ohio, in the suit of E. F. v. G. H., before C. D., a justice of the peace of said township, levied on (*or, levied on and sold, if so*) the following property (*describe it*), under and by virtue of the writ of execu-

<sup>1</sup> § 11706.

<sup>2</sup> §§ 11265, 11266.

<sup>3</sup> § 11267.

tion herewith exhibited to the court, in which (*or*, to the justice before whom) the said constable has been sued in consequence of said levy (*or*, levy and sale, *if so*).

A. B.

Sworn to and subscribed before me, on this —— day of ——, 19——.

C. G., J. P. —— County, Ohio.

16. *Other pertinent provisions.* See also paragraphs 19-22 of Chapter 13; paragraphs 26-28 of Chapter 5; and other references there found.

## CHAPTER 16.

EXECUTION CONTINUED—SALE OF GOODS LEVIED  
ON; INVENTORY OF GOODS SOLD, ETC.

1. *The notice of sale.* All property taken in execution by the constable must be advertised for sale, at four of the most public places within the township where such property was seized, at least ten days before the time appointed for such sale.<sup>1</sup>

2. *Time and place of sale.* Such sale must be held between the hours of ten o'clock A. M. and four o'clock P. M., at the house, or on the premises where such property was taken, or at one of the most public places within the township, and at least ten days after posting the notices thereof.<sup>1</sup> It can not be on Sunday, and should generally not be on an election day, or holiday, or at such other time as public attention is absorbed by other matters.<sup>2</sup>

3-8. *Form of notice or advertisement of constable's sale—*

## CONSTABLE'S SALE.

By virtue of an execution to me directed, I will sell, on Saturday, the 11th day of April, 19—, at ten o'clock A. M., at the dwelling-house of G. H., in Berlin township, Holmes county, Ohio, the following goods and chattels, to wit: [*Describe them, substantially as in the inventory, or in other definite way, mentioning each item, if not too numerous; but if too numerous, mention some of the more important items, and designate the remainder, in general terms; and change the above mentioned time and place to suit the facts.*]

Taken in execution as the property of the said G. H. at the suit of E. F., April 1, 19—.

A. B., Constable.

9. *Conduct of the sale, generally—Bids, when binding, etc.* It is essential to such a sale that it be at auction, to the highest bidder, and for cash.<sup>2</sup> The officer is entitled to a reasonable discretion in receiving bids, and need not accept that of an irresponsible person, whom he knows to be such, or whom he does not know at all. A stranger may be considered irresponsible if, after having been called upon, he does not prove himself to be responsible. The highest bidder means the highest bidder that will pay. If

<sup>1</sup> § 10427.

<sup>2</sup> Murfree on Sheriffs, § 993.

he will not pay the money, the officer should again sell the property.<sup>1</sup>

10. The officer is not permitted to advertise certain property for sale, and on the day of sale, by agreement with the debtor, to substitute other property.<sup>2</sup>

11. The property, if it consists of different articles, can not, as a general rule, be sold in bulk, but must be sold in detail, after opportunity has been given to bidders to inspect the specific articles offered for sale. This does not, however, prevent the sale of several things of the same kind in lots or by measurement or weight; for instance, corn or other grains may be sold at so much per shock or per bushel, hay or iron by the ton, chickens by the dozen, etc. The aim of the officer should be to sell in such detail, or in such lots or measurement, and quantities, or suitable parcels, or even in bulk, as will produce the most money from the property sold. He should sell nothing that is out of sight, but should go to such articles to be sold, as are too bulky to bring to the place where most of the things are sold, for instance, to a hay-stack in a distant field.<sup>3</sup>

12. If property levied on in execution and sold is susceptible of division, and the constable sells more than is necessary to pay the claim and costs, he will be responsible to the debtor for the property thus sold unnecessarily.<sup>4</sup>

13. A constable can lawfully receive and cry at his official sales only such bids as are offered and received at the time and place of sale.<sup>5</sup>

14. The constable may receive bids in writing, or through any other medium, provided they come to him as bids at the time of the sale. He must not bid for himself directly or indirectly. Nor can he lawfully, directly or indirectly, bid as agent for another at his official sale.<sup>6</sup>

15. A bid is a mere offer to purchase, and may be withdrawn at any moment before it is accepted, and the property struck off to the bidder. But as soon as his bid, if

<sup>1</sup> Murfree on Sheriffs, § 999.

<sup>2</sup> *State v. Fuller*, 14 O. 545.

<sup>3</sup> See Murfree on Sheriffs, §§ 994-5.

<sup>4</sup> *Sparling v. Todd*, 27 O. S. 525.

<sup>5</sup> *Sparling v. Todd*, 27 O. S. 521.

P., as constable, seized property of T. in execution, and advertised it for sale; on his way to the place of sale he met with S., who gave P. a written offer of ten dollars for the property levied on; about one o'clock in the afternoon, at the place of sale, no person being present but P., the constable, he announced the proposition of S. as a bid, cried it as a bid, and then declared the property sold to S. On the ensuing day S. paid P. ten dollars, and P. delivered the property to S., who took possession thereof. *Held*, that this was not a lawful bid, and that P., in delivering, and S., in taking possession of the property of T., were wrong-doers, and became liable to T. in an action for the value of the property. *Ib.*

<sup>6</sup> *Ib.* 526.



not withdrawn in time, is accepted, he has made a contract, which is binding on both parties.<sup>1</sup>

16. If a bid is made which must result in an utter sacrifice of the property (such as a bid one dollar for a horse worth fifty), the officer is not bound to strike it off, but may withdraw the article from the sale, and again advertise and sell it. And it has been held that, under such circumstances, the officer may return the article as unsold for want of buyers, even if the plaintiff instructs him otherwise. Whether he could or could not thus return the article as unsold, he can not, probably, withhold property from sale, to preserve it from utter sacrifice, more than once; and it is clear that he will make himself liable, if, to favor the execution debtor, or to prevent a satisfaction of the judgment, he refuses to strike off property under the *pretense* that a bid is a sacrifice of the property.<sup>2</sup>

17. If the purchaser refuses to pay for an article which has been struck off to him, the officer may return on his execution that the article was not sold for want of buyers; for he is not bound to make himself liable, as he would be, by returning an actual sale, and trusting to a recovery, by an action against the purchaser. If the purchaser does not pay, the officer may sell the property again, and the first purchaser will be liable for any difference between his bid and the amount for which the article finally sold. If, however, instead of so doing, the officer deliver the property without payment, he is liable for the amount bid, although he does not receive it. He should not part with the goods until the money is paid.<sup>2</sup>

18. *The officer does not warrant anything connected with the sale.* If he acts in good faith, and his conduct is free from imputations of fraud, neither he nor his sureties are responsible to the purchaser at such sale.<sup>3</sup>

19. *Justice and constable not to purchase; penalty.* Neither the justice of the peace who issued the execution, nor

<sup>1</sup> Murfree on Sheriffs, §§ 999, 1003; Swan's Treatise, Chap. 25, § 16.

<sup>2</sup> Swan's Treatise, Chap. 25, § 16, *verbatim*, and cases there cited. See also, more amply, Murfree on Sheriffs, §§ 996-1008.

<sup>3</sup> Murfree on Sheriffs, § 1010.

The officer does not warrant the title of the execution debtor. But he must act in good faith: therefore, if an officer sell property which he knows at the time does not belong to the judgment debtor, and says nothing about it at the sale, he is responsible to the purchaser, who may recover back the purchase-money, although paid over to the execution creditor, for, in such case, the officer has been guilty of a fraud. Swan's Treatise, Chap. 25, § 16.

It is in no degree incumbent upon the defendant to disclose defects of his property, seized by the sheriff and offered for sale, such as unsoundness of animals or other latent defects; still less is it the duty of the sheriff to make such disclosure if he is aware of the defect. It is his province to sell the property of the defendant, such as it is, and as his sale is the sale of the law, *caveat emptor* is the rule which governs it. 1b., § 1005.

the constable holding it can purchase, either directly or indirectly, any property sold on such execution; and any such justice or constable so doing is liable to forfeit and pay, for every such offense, any sum not exceeding one hundred dollars nor less than five dollars; to be recovered by civil action, in the name of the State of Ohio, before any court having jurisdiction thereof, for the use of the township where such offense was committed; and be also liable to the action of the party injured thereby.<sup>1</sup>

20. *The inventory.* When a constable levies on and sells any goods and chattels, he must make out and annex to his return to the execution, in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which it was sold.<sup>2</sup> See paragraph 28 below, as to penalty for not so doing.

21. *Schedule to be returned of goods not sold.* Where a constable has levied on any goods and chattels, which remain unsold for want of bidders, or other just cause, he must return, with the execution, a schedule of all such goods and chattels.<sup>3</sup>

22-26. *Schedule A.—Being an inventory of the goods and chattels levied on, sold, remaining unsold for want of bidders, etc., by virtue of the writ of execution hereto annexed—*

ARTICLES LEVIED UPON.	NAMES OF PURCHASERS.	PRICE.	
		Dolls.	Cts.
One bay horse . . . . .	John Smith . . . . .	60	25
One book case . . . . .	Henry Brown . . . . .	5	50
Twenty chickens.. . . .	Samuel Jones . . . . .	4	00
One buggy . . . . .	Not sold for want of bidders.		
One washing machine.. .	Not sold for want of bidders.		
(Etc. as may be).. . . .	(Etc., as may be) . . . . .		
Total amount realized..		69	75

A. B., Constable.

Opposite the name of any article sold, write, in the second column, the name of the purchaser, and in the next column, the amount sold for; opposite the name of any article remaining unsold, write, in the same column, the words, “not sold for want of bidders,” as shown above.

28. *Penalty against constable for not making.* The statute provides that for each and every neglect to return a true and accurate schedule or inventory of property sold, or remaining unsold for want of bidders, or other just cause, and if sold, the price at which the same was sold, each and every constable guilty of such neglect shall forfeit and pay, on conviction thereof, any sum not exceeding one hundred dollars, to be recovered by action in the name of the State

<sup>1</sup> § 10428.                      <sup>2</sup> § 10430.                      <sup>3</sup> § 10431.

of Ohio, for the use of the party injured thereby, to be prosecuted before any court having cognizance thereof.<sup>1</sup>

29. *Sale of unsold goods.* When goods remain unsold as specified in paragraph 21 above, the justice must, unless otherwise directed by the party for whom such execution issued, or his agent, immediately thereafter, issue an order commanding any constable to whom said order is directed or delivered, to expose such property to sale. This sale, and the proceedings thereon, must be the same as if such property had been sold on the original execution.<sup>2</sup>

<sup>1</sup> § 10430.

<sup>2</sup> § 10431.

## CHAPTER 17.

## RETURN OF EXECUTIONS.

1. *What is no part of the return.* It has been already stated in paragraphs 6 and 7 of Chapter 5, that the officer must state on each writ he receives, the *time when* he received it, and that this statement is no part of the return, though often so placed, in the forms found in books on such subjects, and in printed blanks, and therefore in actual practice, as though it were a part of the return. See paragraph 3, below.

2. The constable's items of fees are also often placed as though they were a part of the return; but they are not. See paragraph 3, below, and paragraphs 36-38 of Chapter 5.

3. The duty of the ministerial officer is to ascertain from his process and the law which authorizes it, what is the precise duty required of him, and how it is to be performed; then to perform that duty in the exact manner prescribed by law, and then to state in his return precisely what he has done, having reference to the terms of the law, and reciting every detail specified in it.<sup>1</sup> If he goes outside of this, and states things not required of him, that part of his return is of no avail.<sup>2</sup>

4. *When return must be made.* Executions and orders of sale must be returned within thirty days from the time they were received.<sup>3</sup> After that time the constable can do nothing whatever under the writ, except to make return thereof; and for not returning it within that time, he is

<sup>1</sup> Murfree on Sheriffs, § 850.

<sup>2</sup> Where, as a matter of fact, personal property is for the first time seized by an officer and taken into his custody under a writ of execution, the return of the officer that he had levied the same upon certain property, subject to a former attachment, does not preclude the execution creditor from showing that, from an omission of the officer to take the property into his custody, no such attachment had in fact been made. *Root v. Railroad Co.*, 45 O. S. 222.

The sheriff can not alter a party's rights by a statement in his return favorable to another. The return is conclusive on parties and privies as to such facts only as it is his duty to state, and these embrace only a pertinent history of what he did in carrying out the requirements of the writ. Outside matters incorporated by him in it constitute no part of the return and are not evidence. It is no part of his duty to determine the existence of liens. *Id.* 231-2.

<sup>3</sup> § 10417. See par. 1, Chap. 15.



liable to the execution creditor,<sup>1</sup> except as stated in paragraph 1 of Chapter 15.

5. If the judgment upon which he has an execution is docketed in the court of common pleas, or is appealed or stayed, he must return the execution, stating upon it the fact that it has been so docketed, appealed, or stayed.<sup>2</sup>

6. *Failure to make true return, or to pay over, in time.* A constable is liable to the plaintiff in execution for the amount due thereon, in all cases where he does not make a true return within thirty days, and also in all cases where he does not, within that time, pay over the money collected; and it is not necessary, in order to make him so liable, that both duties should be neglected.<sup>3</sup>

FORMS OF RETURN TO EXECUTION.

7-10. *When the money is made—*

By virtue of this writ, I levied on the property of the within named G. H., described in Schedule A, hereto attached, and advertised and sold said property [*or, if part only was sold, say, advertised said property and sold thereof*] to the persons and for the prices set forth in said schedule.

Made by said sale.....	\$265.50
Costs retained.....	\$——
Costs on the judgment.....	\$——
Costs indorsed on this writ.....	\$——
Increase costs items elsewhere hereon).....	\$——
Total costs.....	15.40

Balance.....\$250.10

A. B., Constable.

11-14. *When part of the money is made—*

By virtue of this writ, I levied on the property of the within named G. H., described in Schedule A, hereto attached.

Duly advertised the same and sold as follows:

One cow, to B. D., at.....	\$ 8.00
One buggy to O. G, at.....	15.00

The remainder of said property, being probably sufficient to discharge said execution, remains on hand for want of bidders, there not being time enough again to advertise.

[*Or say, if so: The said G. H. has no other goods and chattels whereof I can make any more of the amount of this writ.*]

Money made by sale.....	\$23.00
Deduct fees.....	6.85

Balance, paid over to ——.....\$16.15

——, 18—.

A. B., Constable.

<sup>1</sup> § 10422. See more fully, par. 1, Chap. 15.

<sup>2</sup> § 3337.

<sup>3</sup> *Evans v. House*, 26 O. S. 488.

15-18. *When paid in money by execution debtor—*

April 11, 19—. Money made by cash from the within named G. H., being.....\$265.50  
[State costs, and deduct, as in paragraphs 7-10, above]... — —

Balance.....\$ — —

Fees: A. B., Constable.

19-22. *When property offered, but no bidders—*

By virtue of this writ, I levied on the property of the within named G. H., set forth in the schedule hereto annexed, marked A, of probably sufficient value to satisfy this writ [or, if so, say, the said G. H. having no other personal property whereof to make any part of the amount of this writ].

I advertised and offered said property for sale on the — day of —, 18—, but it failed to sell, and remains in my hands for want of bidders, there not being enough time again to advertise.

A. B., Constable.

23-26. *When no goods are found—*

No goods whereon to levy. [Or: The within named G. H. has no goods or chattels whereof to make any part of the amount of this writ.]

A. B., Constable.

27-29. *Same, when execution is against administrator, etc.—*

No personal property in the hands of the within named B. D. [the administrator], which were of the said C. D., at his decease, to be administered on, whereof to make any part of the amount of this writ.

A. B., Constable.

30-33. *When property claimed by and restored to third person, and no other property found—*

Levied on, and I advertised the goods and chattels of the within named G. H., described in Schedule A, hereto annexed, to be sold on the — day of —, 19—, and according to a written order of C. D., justice of the peace of — township, hereto appended, \* I restored said property to L. M., claimant. No other personal property of the said G. H. found whereon to levy.

A. B., Constable.

34-37. *Same, when part of seized property is so restored, and the balance sold—*

[Proceed as in form last above to the \*, then add:] I restored the following described property to L. M., claimant, to wit: [here describe the property delivered]. Sold the remainder of said property, as in said schedule in detail set forth.

Made by sale.....\$ — —  
[State costs, etc., and deduct, as in paragraphs 7-10]... — —

Balance.....\$ — —

A. B., Constable.

38. When fresh levy is made after restoring property to third person—

[Follow the form in paragraphs 30-33, above, to the\*, then add:] ———, 19—, served on the personal property of the said G. H., as described in schedule marked B, hereto attached. [State proceedings on this levy as in previous forms, according to the facts.]

A. B., Constable.

39-42. When property levied on is replevied from constable—

Levied on, and, April 9, 19—, advertised the personal property of the within named G. H., described in Schedule A, hereto appended, to be sold on the 20th day of April, 19—; and,

April 12th, 19—, the said property was taken from my possession by E. D., sheriff [or, constable, etc., according to the facts], by virtue of a writ of replevin, a copy of which is hereto annexed, marked B, issued by C. C., justice of the peace of ——— township, ——— county, at the suit of X. Y.

[No other goods or chattels of the said G. H. found whereon to levy. Or other conclusion to the return, as the facts may be.]

A. B., Constable.

43-45. Same, briefer form—

By virtue of this writ, April 9, 19—, I levied upon the personal property of the within named G. H., described in the Schedule A, hereunto annexed. \*

April 13, 18—. The said personal property was seized and replevied at the suit of X. Y., as per copy of summons in replevin and replevin bond herewith returned and made part of this return.

A. B., Constable.

46. In such cases, the constable must return a copy of the summons and of the replevin bond.

47-51. When stayed by injunction, appeal, etc.—

[Proceed as in the foregoing form to the\*, and then add.]

All further proceedings stayed by injunction, a copy of which is hereto annexed, marked B, issuing from the clerk's office of [here mention the court]

A. B., Constable.

Make a similar return in case the execution be stopped by an appeal, or a stay, put in by the judgment creditor.

52-55. When goods sold on an order of sale<sup>1</sup>—

By virtue of this order, I advertised and sold the property therein described to the persons and for the prices following:

<sup>1</sup> An order of sale is an execution issued where a constable has already levied on property which, for some cause, remains unsold. As the property is already in the hands of the officer, this writ merely commands him to expose it to sale (or, in Latin, *venditioni exponas*). No levy need therefore be stated. See par. 21, Chap. 16.

ARTICLES SOLD.	TO WHOM SOLD.	PRICE.
One cow.....	M. O.....	\$ 8.00
One buggy.....	P. Q.....	15.00
	Made thereby .....	\$23.00

A. B., Constable.

56-62. *When a leasehold is sold—*

On April 10, 19—, by virtue hereof, I levied on a certain interest of the defendant, G. H., in the remainder of a certain term of years yet unexpired. in the following described premises, to wit: [*Here describe the premises as in some former deed, or otherwise, accurately.*]

April 13, 19—, I duly advertised said interest to be sold on the — day of —, 19—, at —, and at said time and place, between the hours of ten A. M. and four P. M., I put up to public sale and struck off and sold to one L. W., said interest and estate, for — dollars and — cents, he being the highest and best bidder therefor.

Made by sale.....\$— —  
[*State costs, etc., and deduct, as heretofore directed*]..... — —

Balance.....\$— —

A. B., Constable.

*Form of assignment of the estate so sold, which constable must take—*

Whereas, on the — day of —, A. D. 19—, one E. F. obtained a judgment against G. H., before C. D., a justice of the peace in and for — township, — county, Ohio, in the sum of [*the amount of the execution*]; and whereas, on the — day of —, 18—, an execution was delivered to the undersigned, of that date, by said justice, directed to the undersigned, then and always since being a constable of said county, commanding him to collect out of the personal property of the said G. H. the sum of [*the amount of the execution*]; and whereas, by virtue of said execution, the undersigned, on the — day of —, 19—, levied upon [*here follow the return as to the description of the premises and the proceeding of the sale, substituting the words “the undersigned” wherever the word “I” occurs in the return*]; all of which said doings, under said execution, were duly certified, and, with said writ, returned to said justice, as will more fully appear by reference to the docket entries and files of said justice:

Now, therefore, the undersigned, as constable as aforesaid, and by virtue of the judgment, execution, levy, and sale aforesaid, and in consideration of said sum of — dollars and — cents, paid by said L. W., doth hereby sell,



assign, and convey to said L. W., his legal representatives and assigns, the said interest and estate of the said G. H. in the residue of the said term yet to come, and unexpired, in said premises.

In witness whereof, the undersigned, as constable, hath hereunto set his hand, this — day of —, A. D. 19—.

A. B., Constable of — county, Ohio.

Signed and acknowledged in our presence.

E. B.

M. E.

*Form of acknowledgment of the foregoing—*

The State of Ohio, — county, ss.

On this — day of —, 19—, before me, C. D., a justice of the peace in and for said county, personally appeared the above [*or, within*] named A. B., constable as aforesaid, and acknowledged the signing of the foregoing conveyance to be his voluntary act and deed.

Witness my hand,<sup>1</sup> this — day of —, A. D. 19—.

C. D., Justice of the Peace.

<sup>1</sup> See par. 4, Chap. 3.

## CHAPTER 18.

## TRIAL OF RIGHT OF PROPERTY LEVIED ON OR ATTACHED, WHEN CLAIMED BY A THIRD PERSON; INDEMNIFYING BOND.

1. When, under an execution or attachment, the officer must run the risk of being liable either to the plaintiff for not seizing property lawfully subject thereto under such writ, or to some third person for seizing property not belonging to the defendant (see paragraphs 19-21 of Chapter 13), he should require the indemnifying bond prescribed in paragraph 21 of Chapter 13, and paragraph 5 of this chapter, and then seize, and, if it be not replevied from him, sell the property. Such third person may then sue the purchaser and replevy the property, or he may sue the officer for damages, or he may, before such sale, have a trial to test the ownership of such property; at least so far as concerns the constable, as follows:

2. *Notice of time and place of trial.* When a constable levies on or attaches property claimed by any person or persons other than the party against whom the execution or attachment issued, the claimant or claimants must give three days' notice in writing, to the plaintiff or his agent (or if not found within the county, then such notice must be served by leaving a copy thereof at his usual place of abode in such county) of the time and place of the trial of the right to such property.<sup>1</sup>

3. *The trial.* This trial must be had before some justice of the county, at least one day before the time set for the sale of the property.<sup>1</sup>

4. *If judgment be for claimant.* If, on the trial, the justice is satisfied that the property, or any part of it, belongs to the claimant or claimants, he must render judgment for the costs against the party in whose favor such execution or attachment issued, and issue execution therefor, and give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore it, or so much of it as may have been found to belong to such claimant or claimants.<sup>2</sup>

<sup>1</sup> § 10371.

<sup>2</sup> § 10372.

Such restoration will not prevent such claimant from suing the constable for damages for such seizure and detention. *Abbey v. Searles*, 4 O. S. 598.

5. If indemnified for so doing, the constable may disobey such order of the justice, and may sell the property. If he does so sell, instead of restoring the property, he will be liable to the suit of the claimant, in which suit he may contest the title of the latter.<sup>1</sup>

6. *If against claimant.* If the claimant or claimants fail to establish his or their right to such property, and to every part of it, the justice must render judgment against him or them for the costs that have accrued on account of such trial, and issue execution therefor; and the constable will not, in that case, be liable to the claimant or claimants for the property so taken.<sup>2</sup>

7-12. *Form of indemnifying bond.*

Know all men by these presents, that we, E. F., M. R., and N. T., of Fredericksburg, in the county of Wayne, in the State of Ohio, are bound unto A. B., constable of the township of Salt Creek, in the county aforesaid, in the sum of two hundred dollars, for the payment of which we hereby jointly and severally bind ourselves.

Dated this — day of —, 19—.

The condition of this obligation is such, that, whereas, the above named A. B., as constable of the township and county aforesaid, by virtue of a writ of execution [or, order of attachment] now in his hands, duly issued in the action of E. F. against G. H., by C. D., a justice of the peace in and for the township and county aforesaid, on the — day of —, 19—, commanding him to collect out of the goods and chattels of said G. H. the sum of — dollars debt, and also — dollars costs of suit, has seized the following goods and chattels as the property of the said G. H., to wit: [*describe the property definitely, as, for instance, in the inventory*]; which property is claimed by one H. K., and said claimant H. K. procured such proceedings to be duly had under the statute relating to the trial of the right of property levied on and attached, that said constable was duly ordered by W. S., a justice of the peace of said township, to restore said property to said claimant; and, whereas, said E. F., notwithstanding the premises, has requested said constable to proceed and sell said property, under said execution, as the property of the said G. H., which said constable has agreed to do upon being indemnified.

Now, the condition of this obligation is such, that if the said E. F., M. R., and N. T. shall, in all respects, save harmless and keep indemnified the said A. B. from all losses, costs, attorney and counsel fees, damages and expenses

<sup>1</sup> *Armstrong v. Harvey*, 10 O. S. 527; *Ib.* 533 *Swan's Treatise*, Ch. 25, § 13.

<sup>2</sup> § 10373.

The main object of this law and trial is for the protection of the constable, and not to ascertain the real rights of the parties, who may contest their rights further. 11 O. S. 527, 532.

which he may sustain, pay, or be put to for seizing or selling said goods and chattels, or any of them, or for paying to the said E. F. the money arising from the sale of said goods and chattels, or for any other act or matter relating thereto, or in the proper execution of said writ, then this obligation shall be void, otherwise it shall remain in full force.

[Witnesses, if any, sign here.]

[None are necessary.]

E. F.,  
M. R.,  
N. T.

13. *The officer may recover, on such a bond, the costs, attorneys' fees, and expenses in defending an action brought against him for acting as required under the bond, as well as the damages adjudged against him in said action, although the principal obligor alone has notice of the commencement and pendency of the action against the officer.*<sup>1</sup>

14. A verbal promise by a judgment creditor to indemnify an officer holding an execution against loss or damage from the seizure and sale of property claimed by the debtor to be exempt from execution, is not void as against public policy.<sup>2</sup>

<sup>1</sup> *Finckh v. Evers*, 25 O. S. 82.

If the creditor had due notice of the action, and an opportunity to defend against it, the judgment recovered against the officer is conclusive evidence against the obligors of the amount of damages in the action on the indemnity bond. *Miller v. Rhodes*, 20 O. S. 494.

Where a bond was executed to a constable, by a principle obligor and surety, reciting that the constable had levied an execution on property claimed by a third person, and containing this condition: "Now, if the said constable is kept harmless, and all damages paid by the said bounden, in case said execution be levied on wrong property, *and* the same sold, then these obligations are void:" *Held*, that the obligors were bound to indemnify the constable, although the property was replevied from him by the claimant, the owner, before a sale of the property had been made. *Finckh v. Evers*, 25 O. S. 82.

<sup>2</sup> *Mays v. Joseph*, 34 O. S. 22.



## CHAPTER 19.

## ATTACHMENT OF DEFENDANT'S PROPERTY.

1. *Definitions, explanations, etc.* Attachment, as a legal proceeding, is of two kinds: First, against the person, as for instance in the cases of disobedient witnesses or jurors, already considered in Chapter 10; and second, against the property of the defendant, whereby it may be seized and kept in the custody of the law, out of the defendant's power to secrete it, or remove it or dispose of it, and so that it may be on hand to apply to the payment of a judgment *not yet rendered*. In this latter respect, and in others, it differs from an execution, which is a seizure of defendant's goods to satisfy a judgment *already rendered*.

2. The writ issued by the magistrate to the constable or other officer in such proceedings directing the seizure of property is called the *order of attachment*.

3. An attachment proceeding is not of itself a suit or action, but is a part of a common civil action or suit for money, and is resorted to, in such suits, as a part thereof, to help the plaintiff by seizing the defendant's property at once and before trial in certain cases permitted by law.<sup>1</sup>

4. To authorize an attachment proceeding, either *non-residence* or *fraud* of the defendant must exist, and must be set up by the plaintiff, or by his agent or attorney, by affidavit, much as in the case of arrest before judgment in Chapter 25. However, there is this difference in the requirements as to the affidavits, that in case of an order of arrest, the affidavit *must* state what grounds there are to justify a belief that fraud exists, or the proceedings are illegal, while in the case of an attachment, if fraud is *positively stated* to exist, no such grounds need be set forth in the affidavit; but if the affiant states that he *believes* it exists, he must state his grounds for his belief.<sup>2</sup>

5. But with this affidavit, or its sufficiency, the constable has nothing to do. That is the magistrate's business. If the order issued to the constable or marshal is regular on its face, he must obey its commands, or be liable on his bond for his disobedience. See paragraph 26, Chapter 5.

<sup>1</sup> See *Harrison v. King*, 9 O. S. 388; *Siebert v. Switzer*, 35 O. S. 661.

<sup>2</sup> See *Dunlevy v. Schwartz*, 17 O. S. 640; *Garner v. White*, 23 O. S. 292; also 9 O. S. 388. above; *Emmett v. Yeigh*, 12 O. S. 355.

6. *What property may be attached.* The statute provides that the plaintiff shall have an order of attachment against any property of the defendant, in a civil action before a justice of the peace for the recovery of money, before or after the commencement of the action, when the affidavit required therefor is filed in the justice's office.<sup>1</sup>

7. *What and whose property is exempt from attachment.* The statute further provides that said affidavit must show that the property sought to be attached is not exempt from execution; and, if the personal earnings of the defendant are sought to be attached, that the defendant is not the head or support of a family, or that such earnings are not for services rendered within three months before the commencement of the action, or, that being earned within that time, they amount to more than one hundred and fifty dollars, and that only the excess over that amount is sought to be attached, unless the claim is for work or necessities.<sup>2</sup>

8. It also provides that no such attachment shall issue against the personal earnings of any defendant for services rendered by such defendant within three months before the commencement of the action or the issuing of the attachment, unless the defendant is not the head or support of a family, nor of a dependent widowed mother, or unless the amount of such earnings exceeds one hundred and fifty dollars, and then only as to the excess over that amount.<sup>3</sup>

9. Also that no proceedings in attachment shall be had to garnishee the salary or wages of the employe of a railroad company, by reason of his non-residence, except before a justice in, and on account of his being a non-resident of, the county in which his liability was incurred.<sup>3</sup>

10. When it is desired to attach intangible property of the defendant, such as wages, debts, credits, rights of action,

<sup>1</sup> § 10253.

<sup>2</sup> § 10253 (93 v. 319). The affidavits must also show the nature of the plaintiff's claim, that it is just, the amount the affiant believes the plaintiff ought to recover, and also the existence of some one, or more, of the following particulars: 1. That the defendant, or one of several defendants, is a corporation, having no officer upon whom a summons can be served, or place of doing business in the county, or is a non-resident of the county; or, 2. Has absconded with intent to defraud his creditors; or, 3. Has left the county of his residence to avoid the service of a summons; or, 4. So concealed himself that a summons can not be served upon him; or, 5. Is about to remove his property, or a part thereof, out of the county, with intent to defraud his creditors; or, 6. Is about to convert his property, or part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, 7. Has property, or rights of action, which he conceals; or, 8. Has assigned, removed, or disposed of, or is about to assign, remove, or dispose of his property, or a part thereof, with intent to defraud his creditors; or, 9. Fraudulently or criminally contracted the debt, or incurred the obligation, for which suit is about to be, or has been, brought. § 10253 (93 v. 319).

<sup>3</sup> § 10253 (93 v. 319).

or such other things as can not be touched or seized with the hands, due to the defendant from a third person, such property is reached by a separate branch of the same attachment proceeding, called *garnishment*. The writ issued to such third person is called *notice to garnishee*, such third person being called the *garnishee*.

11. Tangible property (such, for instance, as a horse, merchandise, or other property capable of being taken hold of or touched with the hands) belonging to the defendant, but being in the possession of a third person, and which the officer can not get hold of, or can not "come at," as the statute expresses it, is reached by being garnisheed in the same way as debts, credits, rights of action, and other intangible property. See paragraphs 26 and 39, below.

12. But if the officer can get possession of such tangible property, it is his duty to do so, under the writ of attachment, to the same extent, and subject to the same risks as in the case of executions, as set forth in paragraphs 19-22 of Chapter 13. See further as to garnishment in paragraphs 26-37, below.

13. The plaintiff may either begin his suit and have summons issued and returned, before beginning (in the same suit) his attachment proceedings, or he may so proceed as to have the summons and the order of attachment, and also the notice to garnishee, all issue at the same time.<sup>1</sup>

14. *How order served when accompanied with summons.* If the order of attachment is made to accompany the summons, a copy of this order, and the summons, must be served upon the defendant in the usual manner for the service of a summons, if it can be done within the county.<sup>2</sup>

15. *The order of attachment* must be addressed and delivered to any constable of the proper township, and must require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim (which claim must be stated in the order as in the affidavit), and the probable costs of the action, not exceeding fifty dollars.<sup>1</sup>

16. *The return day* of the order of attachment, when issued at the commencement of the action, must be the same as that of the summons; when issued afterward, it must be executed and returned forthwith.<sup>3</sup>

<sup>1</sup> §§ 10255, 10253.

<sup>2</sup> § 10262. See Chap. 6.

<sup>3</sup> § 10256.



17-22. *Form of order of attachment—*

The State of Ohio, Knox county, ss.

E. F., Plaintiff,  
vs.  
G. H., Defendant.

}

Before C. D., justice of the peace in  
and for said county.

To any constable of College township :

You are commanded to attach and safely keep the goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the said defendant in your said county, not exempt by law from being applied to the payment of the claim of said plaintiff, or so much thereof as will satisfy his claim for — dollars, and to cover costs that have accrued and may accrue on this writ, — dollars.

You will make due return of this order, and of your doings by virtue of the same, on — day of —, A. D. 18— [or, forthwith].

Witness my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace.

23. *Form of certificate on copy of order of attachment—*

I certify the within and above to be a true copy of the original order of attachment [and of the original summons and of indorsements thereon, *if summons is served at same time on same sheet of paper*].

A. B., Constable.

24. *Return to order of attachment.* See paragraphs 90-98, below.

25. *Indorsement of items of fees on such order.* The constable must comply with the law<sup>1</sup> as to indorsing the items of his fees, which he may do as follows :

CONSTABLE'S FEES, ITEMS.

Service and return of summons, 1 person.....	\$ 25
1 copy, 25 cents.....	25
Mileage, 5 miles.....	45
Service and return of order of attachment, 1 person.....	40
1 copy, 25 cents.....	25
Mileage, 5 miles.....	45
Summoning and swearing appraisers.....	1.00
Advertising property sold .....	25
Keeping live stock.....	3.00
[Insert other items, if any].....	
Service and return of notice to garnishee.....	40
1 copy, 25 cents.....	25
Mileage, 3 miles.....	30

Total.....

\$ 7.25

26. *Proceedings against garnishee.* When the plaintiff, his

<sup>1</sup> See par. 36, Chap. 5.



agent or attorney, makes oath in writing that he has good reason to believe, and does believe, that any person, partnership, or corporation named in the affidavit, has property of the defendant in his possession, describing it, if the officer can not get possession of such property, he must leave with such garnishee a copy of the order of attachment, with a written notice to the effect that he must appear before the justice, at the return of the order of attachment, and answer, under oath concerning such property, etc., such questions as may then and there be asked him.<sup>1</sup>

27-30. *Form of notice to garnishee—*

State of Ohio, Knox County, ss.

E. F., Plaintiff,	}	Before C. D., justice of the peace in and for said county.
vs.		
G. H., Defendant.	}	

To any constable of College township:

You are commanded to notify John Garnishee to appear before me, the said justice of the peace, at my office in said township, on the — day of —, A. D. 18—, at — o'clock, — M., to answer all questions put to him touching the property of every description and credits of the said defendant in his possession, or under his control, and truly disclose the amount owing by him to the said defendant, whether the same be due or not; or any stock, bonds, or interest held by or for the benefit of said defendant. And of this writ make due service and return, on the — day of —, A. D. 19—.

Given under my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace.

31. *How garnishee served.* If the garnishee is a person, the copy of the order and notice mentioned in paragraph 26 above must be served upon him personally, or left at his usual place of residence; if a partnership is garnisheed by its company name, they must be left at its usual place of doing business, or be served personally on a member of said partnership; and if a corporation, they must be left with the president or other principal officer, or the secretary, cashier, or managing agent thereof; and if such corporation is a railroad company, they may be left with any regular ticket or freight agent thereof in the county.<sup>2</sup>

32. *Effect of garnishment on public officer.* The service of process of garnishment upon the sheriff, coroner, clerk, constable, master commissioner, marshal of a municipal corporation, or other officer having in his possession any money, claim, or other property of the defendant, or in which the defendant has an interest, binds the same from the time of such service, and is a legal excuse to such officers, to the extent of the demand of the plaintiff, for not paying such money or delivering such claim or property to the de-

<sup>1</sup> §§ 10265, 10267, 10268, 6500 (89 v. 47).

<sup>2</sup> § 10266. *Whitman v. Keith*, 18 O. S. 134.

fendant, as by law, or the terms of the process in his hands, he would otherwise be bound to do.<sup>1</sup>

33. *Form of certificate on notice to garnishee—*

I certify the within to be a true copy of the original order of attachment and notice to garnishee.

A. B., Constable.

34. *A garnishee may pay the money owing to the defendant by him, to the constable having the order of attachment, or into the court; and if he so pays, he will be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim, with some exceptions, if the claim is for necessaries.*<sup>2</sup> Of course, this by implication authorizes the constable to receive such money, for which he is responsible on his bond.

35. *Recapitulation.* The officer must bear in mind that if the garnishee delivers to the officer the property described in the affidavit, no further proceedings are had against him. If the officer can not "come at" such property, he must leave with the garnishee a certified copy of the order of attachment and notice to garnishee. It is on this copy only that the above certificate must be signed.

36. *Return as to notice to garnishee.* See paragraphs 95, 96, below.

37. There are numerous other provisions as to the garnishee, but they do not concern the constable, unless he be ordered to serve on him writs such as are usual in other actions, and therefore need no description here.

38. *How the attachment is executed.* The officer holding the order of attachment must go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that by virtue of said order, he attaches said property at the suit of the plaintiff.<sup>3</sup>

39. When the property can be come at, he must take it into his custody, and hold it subject to the order of the justice.<sup>4</sup>

40. *Inventory and appraisement.* The officer, with two householders of the county, who must be first sworn by the officer, must make a true inventory and appraisement of all property attached, which must be signed by the officer and said householders and returned with the order.<sup>3</sup>

41. *Form of oath to be administered by the constable to the appraisers.* The appraisers having each raised his right hand, the constable will say to them:

<sup>1</sup> § 11829.

<sup>2</sup> § 10269.

<sup>3</sup> § 10257.

<sup>4</sup> § 10257. Where personal property has been seized by an officer, under writs of attachment, he alone can maintain an action to recover damages for its subsequent conversion by a stranger. He has the exclusive right of property. *Schaeffer v. Marienthal*, 17 O. S. 183, 189, 190.

42. "You do, each of you, solemnly swear that you will make a true inventory and appraisement of all the property seized by me in the case of E. F. against G. H., now pending before C. D., justice of the peace in and for — township, — county, Ohio; and this you do as you will answer to God."

43. And to this, each of the appraisers must give assent.

44-46. *Form of inventory—*

Inventory and appraisement of property attached by the undersigned, A. B., constable of College township, Knox county, Ohio, at the suit of E. F. against G. H., made this — day of —, 19—, upon actual view, by said constable, and I. L. and J. M., two householders of said county (said householders having been first duly sworn by said constable, as the law directs), to wit:

ARTICLES ATTACHED.	Appraised Value.	
	\$	cts.
(Mention the articles).....		
.....		

A. B., Constable.

I. L.,

J. M.,

Householders above named.

47. To constitute an attachment of goods, the officer must have actual possession and custody of them, at least to the extent as on a seizure under an execution.<sup>1</sup> And his possession, or that of his agent, must be continuous.<sup>1</sup> He must take as complete possession as possible of bulky articles. Taking possession of the contents of a factory, getting the key thereto and locking it and keeping the key, would be possession of the articles inside, but not of articles in sheds outside.<sup>1</sup>

48. After goods have been attached, they are under the custody of the law; and if they are lost otherwise than through the officer's negligence, the loss is the defendant's. The officer in charge of attached property is bound to use at least ordinary care and watchfulness for its keeping, and if it is lost or injured by his negligence, he is liable to the party injured.<sup>2</sup>

49. Removal of goods is important only as being evidence of possession, but this is important enough to make it desirable in every case where practicable without too great expense, unless possession is evidenced by lock and key, actual possession by agent, or constructive possession under bond, indemnity, or other statutory provision.<sup>3</sup>

<sup>1</sup> Root v. R. R., 45 O. S. 222; Murfree on Sheriffs, §§ 258-65.

<sup>2</sup> Ib. § 258.

<sup>3</sup> Ib. § 260.



50. *When property to be sold immediately*—*Summons by publication* is provided for by law when property has been attached and the summons has not been and can not be served in the county; and when the cause is continued for this purpose, and it appears that any of the property taken under the attachment is live stock, or is of a perishable nature, the justice may issue his order, directing the officer, having the custody thereof, to dispose of it as upon execution.<sup>1</sup>

51-53. *Form of such order.* After the usual caption, such as is the order of attachment, will come words to this effect:

"The action above mentioned having been adjourned, you are hereby ordered to sell and dispose of, as upon execution, the following designated property attached by you in said action and now in your custody, to wit:" [*Description of property here.*]

You will make due return of this order on the — day of —, 19—.

Witness my hand [*etc., as in order of attachment*].

54. *The return on such order* will be the same as given in paragraphs 52-55 of Chapter 17.

55. *The money realized therefrom* must be paid over to the justice and applied as other money realized from the sale of the property attached is applied.<sup>2</sup>

56. *When there are several orders of attachment* against the same defendant, in the hands of the same officer, they must be executed in the order in which they were received by said officer;<sup>3</sup> personal property held on attachment by one officer, is not subject to levy and seizure under writs in the hands of another officer. In order to attach property in the custody of an officer under legal process, unless the writ is placed in his hands, he must be proceeded against as a garnishee.<sup>4</sup> And this rule is not changed by the assent of the officer holding the property, to the subsequent so-called levy.<sup>5</sup>

57. Different attachments of the same property may be made, and one inventory and appraisalment will be sufficient; the lien of the attachments will be in the order in which they are served. The subsequent attachments must be served on the property, as in the hands of the officer, and subject to the prior attachments.<sup>6</sup>

<sup>1</sup> §§ 10263, 10264.

<sup>2</sup> § 10264.

<sup>3</sup> § 10257.

<sup>4</sup> *Locke v. Butler*, 19 O. S. 587; *Bailey v. Childs*, 46 O. S. 557.

<sup>5</sup> *Bailey v. Childs*, 46 O. S. 557.

<sup>6</sup> § 10261. The justice, who issued the attachment having the priority of lien, determines all questions as to the priority of liens on the property attached. §§ 10261, 10284.

Attached goods in the custody of an officer can not be attached by another officer under another writ. But a second attachment, or more, may be made by the same officer who made the first and subsisting one. In cases of such second or subsequent attachments by



58. Property in the hands of an officer by virtue of an execution, can not be attached, subject to such execution, by another officer.<sup>1</sup>

59. *When property attached must be discharged, if proper bond given therefor.* The constable must deliver the property attached to the person in whose possession it was found, when such person executes, in the presence of the constable, an undertaking to the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to it are bound, in double the appraised value of said property, that the said property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action.<sup>2</sup>

60. *As to property lost or destroyed.* But if it appears to the court that any part of said property has been lost or destroyed by unavoidable accident, its value must be remitted to the person or persons so bound.<sup>2</sup>

61-63. *Form of such redelivery undertaking—*

E. F., Plaintiff,	} Before C. D., a Justice of the Peace within and for College township, Knox county, Ohio.
v.	
G. H., Defendant.	

The following property, to wit: [*describe it as in the inventory*], having been attached in this action, in the hands of said G. H. [*or, T. P., if so*], by A. B., constable, on an order issued by said justice, dated —, 19—, and now redelivered to him, we bind ourselves to the above named plaintiff in the sum of — dollars, double the appraised value of said property, that the said property, or its appraised value in money, shall be forthcoming to answer the judgment of the magistrate in this action.

G. H.,  
L. M.,  
N. O.

Done in my presence, and approved by me, this 21st day of April, 19—. A. B., Constable.

64. *When attached property to be restored to defendant.* If, at any time before judgment, an undertaking, approved by the justice, be executed to the plaintiff, to the effect that the defendant shall perform the judgment of the justice, the same officer, he may levy them without the formality of again seizing the goods, since they are already in his possession. Murf. on Sheriffs, § 269.

<sup>1</sup> Locke v. Butler, 19 O. S. 587.

<sup>2</sup> § 10260 (93 v. 141). Three days' notice technical, and if not complied with, appeal must be dismissed. Metz v. Iszoldardo, Court Index (Cincinnati), Feb. 2, 1913.

The meaning and legal effect of this undertaking is that on the order of sale issued thereafter in the action, the property, or its appraised value in money, will be delivered to the constable. If not so delivered or paid for, the constable may attach the property; and the parties interested in the avails of the property to satisfy the judgments in the attachment proceedings, may unite in an action on the undertaking, if the property, or its value, is not forthcoming on demand of the constable. See Swan's Treatise, Chap. 27, § 5; Rutledge v. Corbin, 10 O. S. 478.

attachment in such action must be discharged, and restitution made of any property taken under it, or the proceeds thereof, if sold.<sup>1</sup>

65. The attachment may be discharged by the justice, on motion of the defendant, on the ground either that the affidavit is insufficient, or that the cause stated in the affidavit is untrue. In either case above mentioned an order similar to the one next below will be issued to the officer holding the attached property, which he must, of course, obey.

66. If judgment be rendered in favor of the defendant in the original action, the attachment must be discharged, and the property attached, or its proceeds must be returned to him, unless the plaintiff appeals the case to the court of common pleas,<sup>2</sup> or the property be held by other attachments.

67. During the time allowed by the justice to file the appeal bond, the property must be kept by the officer,<sup>2</sup> and till he is ordered to return it. If the appeal bond be not given, the officer must return the property, or its proceeds, if sold, to the defendant, or to his agent.

68-70. *Form of order to return attached property to defendant.*

[*The usual heading, i. e., the county, etc., names of parties, etc., comes first.*]

On the — day of —, A. D. 19—, a bond to perform the judgment of the court in this case having been duly executed and filed [*or, on motion and hearing; or, judgment having been rendered for the defendant*], I discharged the attachment in this case.

You are therefore ordered to return to the said G. H. the property hereto attached by you on the order of attachment issued to you in said case.

C. D., J. P.

71. *How judgment in attachment satisfied; order of sale.* If judgment be rendered for the plaintiff, it must be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, must be sold by order of the justice, under the same restrictions and regulations as if it had been levied on by execution.<sup>3</sup>

72. *Order to reseize the property.* The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property, which may have passed out of his hands without having been sold, or converted into money; and the constable has, under such order, the same power to take the property, as he would have under an order of attachment.<sup>4</sup>

<sup>1</sup> § 10287.

<sup>2</sup> § 10279.

<sup>3</sup> § 10281.

<sup>4</sup> § 10282.

73-78. *Form of order of sale of attached property, including an order to reseize property.*

The State of Ohio, Knox County, ss.

E. F., Plaintiff,

v.

G. H., Defendant.

} Before me, C. D., a Justice of  
the Peace in and for said  
county.

To any constable of College township:

You are hereby commanded to sell and dispose of, as upon execution, the goods and chattels attached by you upon an order of attachment issued in the above action, to wit: [*description of property.*]

[*Here may be inserted also:* You are also ordered to repossess yourself, for the purpose of selling it, of any property attached by you in said action, which may have passed out of your hands without having been sold or converted into money, or so much of both as will satisfy the sum of —, *etc., as below, or say:*] or so much thereof as will satisfy the sum of — dollars, — cents debt, and — dollars, — cents costs, with interest from the — day of —, 19— (being the amount of judgment then rendered in said action, remaining due and unpaid), and also increased costs.

Make return of this order, and a certificate thereon, showing the manner in which you have executed the same, in thirty days from the time of your receipt thereof.

Given under my hand, this 22d day of —, A. D. 19—. C. D., Justice of the Peace.

79. *The return of such order is the same as in pars. 52-55, of Chapter 17.*

80. *The money arising from such sale, with the amount which may be recovered from the garnishee, must be applied to satisfy the judgment and costs.*<sup>1</sup>

81. *If there be not enough to satisfy the judgment, it will stand, and execution may issue thereon, for the residue, in in all respects as in other cases.*<sup>1</sup>

82. *Any surplus of the attached property, or its proceeds, must be returned to the defendant.*<sup>1</sup>

83. *Trial of the right of property attached.* If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.<sup>2</sup> See Chapter 18.

84. *As to indemnity, if property is in hands of third person.* In general, if the property is not in the possession of the defendant in attachment, but is held by another person in

<sup>1</sup> § 10282.

<sup>2</sup> § 10283.



good faith, having, as against the defendant, a right to the possession, the officer should not intermeddle by attaching it, unless fully identified for so doing, or unless possession is voluntarily abandoned to him.<sup>1</sup>

85. *Holding the property during proceedings in error in higher court.* When an order discharging an order of attachment is made, and any person affected thereby excepts thereto, the justice must fix a number of days, not exceeding ten, in which such party may file his petition in error. During this time the property attached must be held by the constable, or other officer; and during these proceedings, and until further orders from the justice or the court to which the case has been taken, the constable must continue to hold the property.<sup>2</sup>

86. *Officer's return, etc., on orders, etc.* The officer must return upon every order of attachment what he had done under it; the return must show the property attached, and the time it was attached; when garnishees are served, their names and the time each was served must be stated.<sup>3</sup>

87. The officer must also return with the order all undertakings given under it.<sup>3</sup>

88. *When to return "no goods found."* If he finds no property of the defendant subject to seizure under the order of attachment, or if the only property he finds is such that he does not seize it because it is in the hands of another officer or in the hands of a third person, he should make the return of "no property or effects found."

89. *Return of "owns real estate."* The law seems to imply that when no chattels are found, but that the defendant owns real estate in the county, the officer should state that fact in his return, as it provides that "if, in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer . . . that the defendant is the owner of an interest in real estate in the county,"<sup>4</sup> then certain proceedings may be had to send the case to the common pleas court.

90-91. *Form of such returns—*

No property or effects found. [*Here state also, if true:*] The defendant is the owner of an interest in certain real estate situate in — township in said county, now occupied by H. T.  
A. B., Constable.

92-96. *Form of return, when chattels are found and seized—*

On April 22, 19—, I went to the place where the defendants' property, described in the annexed inventory and appraisement, was found; and there, at — o'clock —M. of said day, in the presence and hearing of W. X. and Y. Z., two credible persons, did declare that, by virtue of this or-

<sup>1</sup> Swan's Treatise, Chap. 27, § 5.    <sup>2</sup> § 10302.    <sup>3</sup> § 10285.    <sup>4</sup> § 10288.



der, I attached said property at the suit of E. F., and did then and there attach it; and I then, with W. X. and Y. Z., two householders of the county of —, after administering to them an oath truly to inventory and appraise said property, made a true inventory and appraisement of said property, being all that was attached; and said inventory and appraisement, signed by me and said householders, is annexed to this order and returned therewith.

Said property is now in my custody [*or, if so, say*]. Said property was delivered to T. P., in whose possession it was found, he having given an undertaking, with sufficient sureties, as required by law, which undertaking is herewith returned.

[*Or, if the facts require it, omit the preceding paragraph, and instead thereof, say:*] On April 23, 19—, in obedience to a written order of I. S., justice of the peace of — township, — county, hereunto annexed, I restored the following described property above mentioned, to T. P., claimant, to wit: [*here describe it as in the inventory.*]

[*If a garnishee was served, here add:*] I could not get possession of the property alleged to be in the possession of T. P. [*or, if a corporation, name it*], the garnishee; and on April, 19—, at — o'clock — m., I served said T. P. [*or, said corporation*] with a copy of this order and of the notice to garnishee hereunto annexed, to appear and answer, etc., by leaving the said copies with the said garnishee personally [*or, at the said garnishee's usual place of residence; or, with L. M., the president (or clerk, etc.) of said corporation; or, otherwise, as the case may require*].

97. *Form of return, when property is attached subject to a prior attachment.* See paragraphs 56, 57.

On April 24, 19—, I went to the place where the property described in an inventory and appraisement thereof, made under an order of attachment, in the action of E. F. against the within-named G. H., and served on the 22d day of April, 19—, and there, and on said 24th day of April, 19—, at 10 o'clock A. M., in the presence and hearing of S. T. and U. V., two credible persons, did declare that by virtue of this order I attached said property, and did then and there attach it, as in my hands, subject to said prior attachment. A. B., Constable.

98. *As to attachments before the debt is due*, for which provision is made by the statutes,<sup>1</sup> the constable's duties are the same as in other attachments; and they need therefore no further consideration herein.

<sup>1</sup> §§ 10290-10296.

## CHAPTER 20.

## REPLEVIN.

1. *What property can be replevied; affidavit required, etc.* When one or more articles of personal property are in the possession of a person who has not as good a right to such possession as another person has, this other person can obtain such property from the wrongful holder by an action of replevin.

2. The first step in such an action is the filing of an affidavit prescribed by law with the proper magistrate, by the person claiming the right of possession.<sup>1</sup> But with this affidavit the ministerial officer has nothing whatever to do.

3. *The summons and writ of replevin; its command.* Upon such affidavit being made and filed with the magistrate, he must issue a summons as in other cases, but, in addition, commanding the officer immediately to seize and take into custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver them to the plaintiff.<sup>2</sup> That is, a summons in effect like the one given in paragraphs 3-8 of Chapter 6 will be issued, but there will be inserted in it a command to seize and take charge of the goods described therein, and to deliver them to the plaintiff.

4. But see further, carefully, about such delivery in paragraphs 31 to 49, below.

5-10. *Form of writ of replevin, with summons.* The summons, combined with the writ of replevin, as mentioned in paragraph 3, will be substantially as follows:<sup>2</sup>

The State of Ohio, — county, ss.

To any constable of — township:

You are hereby commanded to summon G. H. to appear before me, the undersigned, a justice of the peace in and for the said county, at my office therein, on the — day of —, 19—, at — o'clock —M., to answer the action of E. F. for wrongfully detaining the following described goods and chattels of the said E. F., to wit: [*here the goods are described*]. You are further commanded immediately to seize and take into your custody, wherever they may be

<sup>1</sup> See § 10462 (SS v. 275). <sup>2</sup> § 10463. But see pars. 31-49 of this chap.

found in said county, the said goods and chattels above mentioned, and deliver the same to the said E. F.

You will make due return of this writ on the — day of —, A. D. 19—.

Given under my hand, this — day of —, A. D. 19—. C. D., Justice of the Peace.

11. *How summons and writ of replevin is executed.* The officer must execute the writ by taking the property mentioned in the writ; and he must also deliver a copy of the writ to the person charged with the unlawful detention of property, or leave such copy at his usual place of residence.<sup>1</sup>

12. *Form of certificate on copy of writ.* The officer should make a certificate on the copy left with the defendant, or at his residence, which may be as follows:

13. "I certify the within to be a true copy of the original writ. A. B., Constable."

14. *Breaking open buildings to execute writ.* The officer, in executing the writ, may break open any building or inclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or inclosure, nor until he has demanded the delivery of the property and such delivery has been refused.<sup>2</sup> See Chapter 24.

15. *As to property in hands of third persons.* When the officer finds the property described in the writ in the possession of a person not named in the writ, he should proceed as directed in paragraphs 50–52, below.

16. *Appraisement.* For the purpose of fixing the amount of the undertaking, the value of the property taken must be ascertained by the oath of two responsible freeholders of the township, whom the constable must swear truly to assess the value thereof.<sup>3</sup> This appraisement must be returned to the magistrate with the writ of replevin,<sup>4</sup> and may be in form as follows:

17–20. *Form of inventory and appraisement of property taken in replevin—*

We, the undersigned, two freeholders, residents of — township, — county, Ohio, having first been duly sworn by A. B., constable of said township, to assess the value of the property seized by virtue of a writ of replevin, issued by C. D., justice of the peace of said township, at the suit of E. F. against G. H., do, upon actual view, assess the value thereof as follows, viz:

<sup>1</sup> § 10464.

<sup>2</sup> § 10479.

<sup>3</sup> § 10471 (88 v. 227).

<sup>4</sup> § 10464.

One " Buckeye " mower.....	\$60.00
One spring wagon.....	20.00
One set harness.....	10.00

Total value..... \$90.00

Witness our hands, this — day of —, 18—.

C. P.,

D. Q.,

Appraisers.

21. *Constable's certificate as to appraisement.* The law does not specifically require the ministerial officer acting under the writ to make any certificate on this inventory and appraisement. Yet from the nature of the proceedings and the other requirements in such cases, he should make, on the back of the foregoing inventory, or below the signatures thereon, a certificate substantially as follows:

22-24. *Form of such certificate—*

I do hereby certify that the within [*or, above*] named C. P. and D. Q., two responsible freeholders, residents of — township, — county, of the State of Ohio, were duly summoned and sworn by me truly to assess the value of the within [*or, above*] described property, and make appraisement thereof as within [*or, above*] set forth, this — day of —, 19—. A. B., Constable.

25. *When the officer must take possession of the property.* The constable is not required to take possession of the property described in the order until there is executed by sufficient surety of the plaintiff, a written undertaking to the defendant, to the satisfaction of the constable, to the effect that the plaintiff will duly prosecute the action, and also that, in the event that the suit shall be decided against the plaintiff, that the plaintiff will pay the costs made upon such order, and the expenses incurred in the care and management of the property to be taken.<sup>1</sup>

26-29. *Form of replevin bond by plaintiff, to satisfy constable, etc.—*

E. F. } In replevin, before C. D., a justice of the peace of  
vs. } — township, — county, Ohio. Docket —,  
G. H. } No. —, page —

We bind ourselves to the defendant, G. H., in the sum of — dollars, that the said plaintiff, E. F., shall duly prosecute the action designated above, and that in the event that the suit shall be decided against him,<sup>2</sup> he will pay the costs made on the order of replevin, and the expenses incurred

<sup>1</sup> § 10465 (88 v. 275).

<sup>2</sup> Here will be "him," "her," or "them," if plaintiff be a natural person or persons, and "it" if a corporation; and the next word will be "he," "she," "they," or "it," as the facts require.



in the care and management of the property to be taken.

This undertaking, and the sureties } E. F., Plaintiff.  
thereon, approved by me. } L. M., } Sureties.  
A. B., Constable. } N. O., }

30. *This bond is for the benefit of the constable or other officer who might seize the goods, and then, if the plaintiff was irresponsible, and discontinued the case, find that he could get no fees. Such officer may proceed without requiring this bond, if he chooses so to do.*

31. *When the replevied property must be delivered to the plaintiff; replevin bond.* If the plaintiff executes to the defendant, within twenty-four hours after seizure of the property by the officer,<sup>1</sup> a written undertaking, with one or more sufficient sureties, in at least double the value of the property taken, but in no case less than fifty dollars, to be approved by the justice, to the effect that the plaintiff will duly prosecute the action, and that, in case the judgment shall be against him, he will then return the property taken or pay the value so assessed, at the election of the defendant, and also pay the damages assessed for the taking, detention, and injury to the property, and costs of suit, then, said undertaking being duly executed, but not before the time named in the summons for the trial, the constable (or other officer to whom the writ was issued) must deliver to the plaintiff, or to his agent or attorney, the property replevied, *except* in the cases specified in paragraphs 40 and 46, below.<sup>2</sup>

32-37. *Form of replevin bond by plaintiff, to return property, pay damages, etc.* The undertaking mentioned in the preceding paragraph must be in form substantially as follows:

E. F. } In replevin, before C. D., a justice of the peace of  
vs. } Mohican township, Ashland county, Ohio. Docket  
G. H. } —, No. —, page —.

We bind ourselves to the \* defendant, G. H., in the sum of — dollars, that the said plaintiff, E. F., shall duly prosecute the action designated above, and that, in case the judgment shall be against him, he shall then return the property taken, or pay the value thereof as assessed in said action, at the election of the defendant therein, and also pay the damages assessed for the taking, detention, and injury of said property, and costs of suit.

This undertaking, and the sureties } E. F., Plaintiff.  
thereon, approved by me. } M. N., } Sureties.  
C. D., J. P. } O. P., }

38. *What officer must do, if bond not given in twenty-four hours.* If the undertaking mentioned in paragraphs 31-37, above, is not given within twenty-four hours from the taking of the property under said writ of replevin, the officer must return the property to the defendant.<sup>3</sup>

<sup>1</sup> See par. 38, on this page.

<sup>2</sup> § 10466 (88 v. 275).

<sup>3</sup> § 10473.

39. *Officer liable for what neglect.* If the officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he will be liable to the defendant in damages.<sup>1</sup>

40. *Officer's duty as to replevied heir-looms, keepsakes, relics, etc.* In all cases where the property replevied consists of heir-looms, personal keepsakes, or other article of property, the value of which consists, in whole or in part, in its being a relic, model, gift, family picture, painting, or rare production of art or nature, and not wholly in its general marketable character, the officer must retain and keep the same, subject to the order of the court, if the defendant, his agent or attorney, on or before the time named in the summons for trial, files his motion, in writing, with the magistrate, for an order requiring the officer to retain said property, subject to the final order of the court.<sup>2</sup>

41-44. *The form of such order, if given, may be as follows:*

State of Ohio, — county, — township.

To A. B., Constable:

You are hereby ordered to retain and safely keep the following described property, taken by you in replevin in the suit of E. F. v. G. H. before me, the undersigned magistrate, to wit: [*here is specified the property to be so kept*], till further order.

C. D., Justice of the Peace.

45. In case the defendant does not file said motion, or the magistrate, upon application of either party, refuses to order the officer to retain said property, for the reason that it does not belong to one or more of the kinds of personal property aforesaid, the officer must deliver said property to the plaintiff, his agent or attorney, upon the execution of an undertaking as provided in paragraphs 32-37, above, within one day after the expiration of the time for filing said motion, or, in case said motion is filed, within one day after the refusal of the magistrate to order the officer to retain the property.<sup>2</sup>

46. *When the property, though not heir-looms, etc., must be given to defendant before trial.* The defendant may, at any time before the time named in the summons for the trial, and after the appraisement, execute an undertaking to the plaintiff, with one or more sufficient sureties, in double the appraised value of the property, to be approved by the justice, conditioned that the defendant will safely keep the property, and, in case the judgment shall be against him, that he will then return the property taken, or pay the value so assessed, at the election of the plaintiff, and also pay the damages assessed for the taking, detention, and injury of the property, and costs of suit; and then the property seized must be re-

<sup>1</sup> § 10473.

<sup>2</sup> § 10466 (88 v. 275).

turned by the officer to the defendant, to be retained by the defendant until the determination of the action.<sup>1</sup>

47. *The form of such bond.* [Follow the form in paragraphs 32-37, above, to the \*, then add] plaintiff, E. F., in the sum of — dollars, that the said defendant, G. H., will safely keep the property taken in the action designated above, and that in case the judgment shall be against him [or her, etc.: see note 2, page 118] he shall then return the property taken, or pay the value thereof as assessed in said action, at the election of the plaintiff therein, and also pay the damages assessed for the taking, detention, and injury of said property, and costs of suit.

This undertaking, and the sureties thereon, approved by me.	} G. H., Defendant. } Q. R., } S. T., } Sureties.
C. D., Justice of the Peace.	

48. *Final disposition of keepsakes, etc., in hands of officer.* When any replevied property remains in the officer's hands as directed in paragraph 40 or 46, above, or in other proper way, the magistrate must, at the time of rendering final judgment, determine which of the parties is entitled to the possession of such property, and order the officer to deliver it to the proper party accordingly.<sup>2</sup>

49. *When replevied property must be turned over to the sheriff.* In case the appraised value of the property exceeds three hundred dollars, or in case an appeal is taken from the final judgment and order of the magistrate, he must order the officer to turn over the property in his possession to the sheriff of his county, to be held by such sheriff as in like cases originating in the court of common pleas.<sup>3</sup>

50. *Officer's rights, duties, etc., when property is in hands of a third person.* The writ of replevin confers no authority on the officer to seize property which is not actually or constructively in the possession of the party named in the writ. And where the property is taken from the possession of a third person who is the real owner, the writ will not justify the officer in taking it, although it is the identical property described in the writ.<sup>4</sup>

51. To illustrate: Suppose that the magistrate issues a writ of replevin to an officer, directing him to seize a certain horse therein described, claimed by the plaintiff, E. F., and unlawfully detained from him by the defendant, G. H.; and the officer, on going to G. H.'s to seize the horse, finds it in the possession of T. P., who claims to be its real owner, and who is not a party to the suit. In such case, it might appear on proper trial that G. H. and T. P. had entered into collusion to cheat E. F., and that G. H. had only given the horse to T. P. to keep for a short time, for that purpose;

<sup>1</sup> § 10467 (SS v. 275).      <sup>2</sup> §§ 10880, 10881.      <sup>3</sup> § 10468 (SS v. 275).  
<sup>4</sup> See *State v. Jennings*, 14 O. S. 73; *Ib.* 79, 80, and cases there cited.



or, it might be that T. P. was telling the truth, and that the horse is really his. If it should finally be adjudged that T. P. had the horse for the purpose of such cheating, it not being his, it would be *constructively* in the possession of G. H., though *actually* in the possession of T. P., and the officer would be liable on his bond if he failed to seize it. But if T. P. were telling the truth, and the officer had seized the horse, he would be liable to T. P. for having done so.<sup>1</sup> The officer's danger arises from the fact that T. P. is not a party to the suit, and the officer is not ordered to seize T. P.'s property.<sup>2</sup>

52. *Indemnifying bond in such case.* The officer should require an indemnifying bond in such cases as above supposed, as he can not act with safety to himself without so doing; and if the plaintiff refuses to give such bond, the officer can properly refuse to seize property so found in the possession of third persons.

53-58. *The form of such an indemnifying bond* may be as follows:

Know all men by these presents, that we, E. F., G. S., and H. T., are bound unto A. B., constable of — township, — county, Ohio, in the sum of — dollars, for the payment of which we jointly and severally bind ourselves.

Signed this — day of —, 19—.

Whereas, in a suit now pending before C. D., a justice of the peace of said township and county, wherein said E. F. is plaintiff and G. H. is defendant, and wherein said plaintiff charges said defendant with wrongfully detaining the following described property, to wit: [*here describe, as it is in the writ, the property found in the possession of the third party*]. A writ of replevin was issued by said justice of the peace to said constable, commanding said constable to seize and take into his custody the said property, which property said constable finds in the possession of T. P., who claims the right of possession thereof against both of said parties to the suit.

Now the condition of this obligation is such, that if the said E. F. shall pay to said A. B. all damages, costs, fees, and other expenses that may be sustained or incurred by said A. B. by reason of his seizing and taking into his custody said property and proceeding in relation thereto as said constable should do if said property were found by him in the possession of said G. H., then this obligation is to be void; otherwise it is to remain in full force.

E. F.,  
G. S.,  
H. T.

<sup>1</sup> See cases referred to in note 4, preceding page.

<sup>2</sup> As to officer's liability and protection under writs, see pars. 26-28, Chap. 5.



59. *When property is constructively in the possession of defendant, liable to seizure, and when not.* Whenever the goods of one person, say E. F., are held for him by another person, say, T. P., T. P. being, for instance, the servant or agent of E. F., or a borrower from E. F., who has a right to claim his goods from such borrower, servant, agent, etc., then such goods are constructively in the possession of E. F., and the officer may seize them. But even if E. F. owns the goods, and T. P. has possession of them and has a lien on them, as, for instance, if T. P. were a mechanic who had possession of E. F.'s wagon for the purpose of making some repairs on it, which were done but not paid for, or if T. P. were a hotel keeper and had possession of E. F.'s trunk, clothing, or other articles, which he claimed the right to keep till E. F.'s hotel bill should be paid, then T. P. would have a lien on the goods, and would be entitled to their possession till such bill for repairs or such hotel bill should be paid. But if the constable or plaintiff should pay for these repairs or hotel bill, or offer legal tender money therefor, then T. P.'s right of possession would be gone, and the officer could safely seize such goods. If the officer took the goods from T. P. against his will while his lien was still good and unpaid, or the horse from T. P. if he were telling the truth, as mentioned in paragraph 51, above, then T. P. could replevy them back again from the officer, and at such officer's costs.<sup>1</sup>

60. *Concerning return of writ of replevin, appraisement, replevin bond, etc.* On or before the return day of the writ of replevin, the officer should attach to it the inventory and replevin bond or bonds, if any were given; and must indorse on the writ an account of his doings, and deliver the writ so indorsed and the papers so attached to the magistrate. The indorsement should be substantially as follows:

61-66. *Form of return on writ of replevin—*

On the — day of —, 19—, I replevied the property within described, and caused the same to be appraised as per schedule hereto annexed.

[*Or say, if so, instead of above:* On the — day of —, 18—, I went to the defendant's residence to replevy the property within described, and found it in the possession of T. P., who claimed the right of possession thereof. I then required the plaintiff to execute to me an indemnifying bond to protect me in case I should seize said property so found, which he refused to do. I therefore did not replevy it; or, if bond was given, say, which he duly executed, and I thereupon replevied said property, and caused the same to be appraised as per schedule hereto annexed.]

Also, on the same day, I served said writ on the defend-

<sup>1</sup> See same cases as in note to par. 50, above.

ant by delivering a certified copy thereof to him personally [or, by leaving a certified copy thereof with him personally].

The within named E. F. having given a replevin undertaking to said G. H., defendant, with E. R. and F. S. sureties approved by C. D., justice of the peace, herewith returned, I delivered said property to said E. F.

[Or, say, if so: The within named E. F. failed to give a replevin bond according to law, and I returned said property to the defendant; or otherwise state briefly, but clearly, what was done under the writ].

A. B., Constable.

67. My fees on this writ:

[Give items, as, for instance:]

Service and return of this writ.....	\$ .40
Mileage, 2 miles.....	.25
Copy . . . . .	.25
Summoning and swearing appraisers....	1.00
Replevin bond.....	.40
Indemnifying bond.....	.40

---

Total ..... \$3.70

## CHAPTER 21.

## FORCIBLE ENTRY AND DETAINER.

1. *Notice to leave premises.* The first step in proceedings before a magistrate to recover possession of lands or tenements is the service of a notice, in writing, by the person desiring to recover possession, upon the person who has unlawfully entered upon and retains possession of such lands or tenements, or who, having lawfully entered, unlawfully retains possession of such lands and tenements, against the will of the person entitled to their possession.<sup>1</sup>

2. *It is generally against tenants* holding over beyond their term that such proceedings are had, though the law specifies several other cases in which they can be instituted.<sup>2</sup>

3. *Serving the notice.* The notice mentioned above may be served for the person desiring to recover possession either by himself or by some one else for him, as by his attorney or other agent.

4. As a matter of fact, such person often asks the constable or marshal to serve the notice, who then acts, in this particular, not as an officer, but as such agent. The notice may be in form, and in such case should be signed, as follows :

5-10—

To G. H.:

You will please take notice that I want you to leave the premises you now occupy, and which you have rented of me, situated and described as follows: [*here describe the premises briefly as practicable, but so clearly as to leave no doubt as to what premises are meant, as, for instance*] the three story brick dwelling-house on the north-west corner of E— and W— streets, known as number 397 W— street in Cincinnati, county of Hamilton, and State of Ohio.

Your compliance with this notice within three days [or, on or before the 31st day of May, 18— [*giving not less than three days' notice*], will prevent legal measures being taken by me to obtain possession of the same, agreeably to law.

Yours, respectfully,

E. F., [*the plaintiff's name.*]

Dated May 25, 19—. By A. B. [*the constable's signature*].

11. *How served.* Whether the notice is served by the

<sup>1</sup> § 10451.

<sup>2</sup> See § 10449.

plaintiff, or by the officer for him, it should be served by leaving a correct copy of it with the person proceeded against personally; or, if he can not be found, then by leaving such copy at his usual place of residence.<sup>1</sup>

12. *A memorandum* should be made on the notice, stating when and how it was served, though this is not required by law. Such memorandum may be in form as follows:

13-14—

On May 25, 19—, I served the within notice on the within named G. H., by leaving a true copy thereof with him personally [*or, at his usual place of residence.*]

E. F.,

[By A. B., *if so.*]

15. The constable must serve the summons, and make return thereon, as in the case of other summons in civil actions. Such service must be made at least three days before the day of trial appointed by the justice.<sup>2</sup> The summons will be substantially as follows:

16-22. *Form of summons in forcible entry and detainer.*  
The State of Ohio, ——— County, ss.

To any constable of ——— township:

Whereas, complaint is made before me, the undersigned, one of the justices of the peace within and for said county, by E. F., plaintiff, against G. H., defendant, for the forcible entry and detention of the following described premises: [*Here the premises are located and described.*]

You are therefore commanded to summons the said G. H. to appear before me, at my office, in ——— township, in said county, on the ——— day of ———, 19—, at ——— o'clock, — M., of said day, to answer said complaint. And of this writ make due return, on the ——— day of ———, A. D. 19—.

Given under my hand, this ——— day of ———, A. D. 19—.

C. D., Justice of the Peace.

23. *Indorsement on summons* will be substantially as follows:

Justice's costs.....	\$
Constable's costs, items.....	
Service and return.....	.40
Mileage, three miles.....	.30
One copy.....	.25
[ <i>etc., if other costs.</i> ]	-----
Total .....	\$----

<sup>1</sup> See § 10451.

<sup>2</sup> § 10453. See Chapter 6 as to summons.

When the writ is not served three days before the trial, owing to the negligence of the officer, he renders himself liable to the plaintiff, who can recover by suit the damages he has sustained. Swan's Treatise, 546.



24-25. *Form of certificate on the copy served.*

I certify that the within and above is a true copy of the original writ, and of the indorsements thereon.

A. B., Constable.

26. *Form of return on summons.* Follow the forms given in Chapter 6.

27. *If a jury is demanded, how to be served.* Either party to such a proceeding may demand a jury, in which case the constable will receive from the magistrate a summons for a jury like that given in paragraphs 6-12 of Chapter 8; and the officer receiving such summons must then proceed in obedience to such summons in every particular, serving the jurors, making return, etc., as directed in the chapter just named.

28. *When writ of restitution issues.* If judgment is rendered for the plaintiff, a writ of execution will be given to the constable, which must be substantially as follows:<sup>1</sup>

29-34. *Form of writ of restitution.*

The State of Ohio, — county, ss.

To any constable of — township.

Whereas, in a certain action for the forcible entry and detention [*or, for the forcible detention*] of the following described premises, to wit: [*the property is here described*], lately tried before me, wherein E. F. was plaintiff and G. H. defendant, judgment was rendered on the — day of —, A. D. 19—, that the plaintiff have restitution of said premises; and that he also recover costs in the sum of — dollars and — cents.

You, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also, that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs; and of this writ make legal service and due return.

Witness my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace.

35. It will be noticed that the foregoing is both a writ of *restitution* and *execution*, since it commands the officer to restore possession to the plaintiff, and to levy on defendant's goods to make the costs.

36. *How such writ executed.* The officer must, within ten days after receiving the writ, execute it by restoring the plaintiff to the possession of the premises, and must levy and collect the costs and make return, as upon other executions.<sup>2</sup>

37. As to executions, how and upon what property levied, how returned, see and follow Chapters 11 to 18 inclusive.

<sup>1</sup> § 10460.

<sup>2</sup> § 10461.

38. *Forms of return on writ.* If the defendant had no goods whereon to levy, and the officer consequently executed the writ by duly restoring the plaintiff to the possession of the premises, the officer's return on the writ should be as follows:

39-40—  
On the — day of —, 19—, by virtue of this writ, I restored the plaintiff within named to the possession of the within designated premises. A. B., Constable.

41. If goods were levied on and sold, the return may be substantially as follows:

42-44—  
On —, 19—, by virtue of this writ, I restored the plaintiff to the possession of the within designated premises.

I have also levied upon, advertised, and sold, for the costs, as required by law, goods and chattels of the defendant as set forth below:

ARTICLES.	NAME OF PUR- CHASER.	PRICE.	STATEMENT OF COSTS.
			Am't made by sale... \$ ... \$....
.....	.....	.....	Costs stated within... ..
.....	.....	.....	My fees on this writ.. ....
.....	.....	.....	Other costs accrued... ..
.....	.....	.....	..... ..
.....	.....	.....	..... ..
.....	.....	.....	..... ..
.....	.....	.....	Total costs..... \$....
.....	.....	.....	Am't ret'd to def't..... \$....
.....	.....	.....	..... ..
.....	.....	.....	..... ..
.....	.....	.....	.....A. B., Constable.

45. If defendant pays costs without sale, erase all the above from the word "premises" except the statement of costs, change the item "am't made by sale" to "am't made by cash," and write on the blank lines "the defendant has paid the costs as set forth above, making the within directed levy and sale unnecessary."

46. *What officer must do, if case is taken to common pleas court on error.* If the magistrate should receive notice that the proceedings have been stayed by the court of common pleas, in error, as provided by law, he must at once issue his order to the officer executing the writ, commanding him to delay all further proceedings upon the writ of restitution;

and if the premises have been restored to the plaintiff, such officer must at once place the defendant again in possession of the premises, and return the writ with his doings and costs taxed thereon.<sup>1</sup>

47. For convenience, such order should be attached to the writ of restitution.

48-50. *Form of return on writ, if such order received before restoring possession to plaintiff—*

On —, 19—, I received an order, hereto attached, to delay all further proceedings on this writ, for which reason I have taken no action hereon [or, if any steps were taken, state what they were]. A. B., Constable.

51-54. *Same, if received after.*

[Make return of all doings as directed in pars. 38-45, above, and then add to such return: On the — day of —, 19—, I received the order hereto attached, and on —, 19—, by virtue thereof, I restored the defendant to the possession of the premises above mentioned.

My fees on said writ and order. A. B., Constable.

[Here give items not already given, or erase items given, and here give all items on writ and order.]

<sup>1</sup> § 10461.

## CHAPTER 22.

## ARRESTS, GENERALLY, AND GENERAL PRINCIPLES RELATING THERETO.

1. *What arrests may be made for, etc.* Arrests may be made in civil cases when based upon certain fraudulent conduct of the person to be arrested, as more fully set forth in Chapters 25 and 26. They may be made for contempt of court, as in Chapter 27; for violation of a law or ordinance, as in Chapter 28; in proceedings to keep the peace, as in Chapter 31; and under search warrants, as in Chapter 30.

2. But as the spirit of our institutions and our laws jealously guard the liberty of the individual, as well as the peace and dignity of the community and state, there are certain principles or laws regulating arrests, not all of them enacted into statutes, which the arresting officer must regard.

3. Some of these principles, and especially the statutory regulations as to arrests, are given in the chapters relating to them, mentioned above. But the more general ones are given here, classed as applicable (1) to both civil and criminal cases, (2) to criminal cases only; and (3) to civil cases only.

4. There are other important matters kindred to the foregoing, some of them relating to privilege from arrest, given in Chapter 23 hereof, and to the forcible entry into dwellings, breaking outer and inner doors or windows to make arrests, to serve certain writs, etc., given in Chapter 24 hereof.

5. The officer whose duty it may become to make any arrest should be familiar with all of these before he is called on to make such arrest.

6. *Arrest defined.* Seizing a person and detaining him in the custody of the law, is arresting such a person.

## SOME MATTERS APPLICABLE TO ARRESTS IN BOTH CIVIL AND CRIMINAL CASES.

7. *What constitutes an arrest.* An arrest about which there can be no question or quibble, is made by the officer seizing or touching the defendant, and informing him that he is a prisoner, or is arrested, or words to that effect. It



makes no difference how slight the touch may be; touching defendant's hand which is out of a window, etc., is enough.<sup>1</sup> Nor need this touching be done by the officer himself; if he be near, directing the operation, it may be done by another person.<sup>2</sup>

8. But if the defendant submits to the officer, even though the latter do not touch him, the arrest is complete. For instance, if the officer and defendant go together to the latter's house, and he there executes a bail bond, or if the officer meets the defendant on horseback, or in a carriage, or in a room, and says to him, "I have a writ against you, you are my prisoner," upon which he submits, turns back, or goes with the officer, it is a complete arrest; but not so if he had fled, instead of going with the officer, unless the latter had touched or laid hold of him; physical contact is not necessary if the defendant knows he is meant to be arrested, and goes in good faith with the officer.<sup>3</sup>

9. But if the officer should only show a writ to a defendant, and should say nothing and do nothing to him, and he should voluntarily accompany the officer for some distance, this would not be an arrest.<sup>4</sup> And if a defendant pretending, but not intending, to submit, flees before actual contact; as where an officer, stating his wishes to the person he means to arrest, was answered, "Wait for me outside, and I will come to you," but instead of coming, that person escaped by another way, it was no arrest.<sup>5</sup> There is no arrest where a person is not deprived of his liberty.<sup>6</sup>

10. If an officer come to the bedside of a sick person with a proper writ, and tell the invalid that if he do not satisfy plaintiff or give bail, he will take him and put him in charge of one of his men; or if an officer goes into a room and tells the defendant he arrests him, and locks the door, the arrest is complete, for in each case the defendant is in the control and custody of the officer, though he do not touch such person in either case.<sup>7</sup>

<sup>1</sup> *Genner v. Sparkes*, 1 Salk. (K. B., Eng.), 79; *Whitehead v. Keys*, 3 Allen (Mass.), 495; *Huntington v. Blaidsell*, 2 N. H. 318; *Sandon v. Jarvis*, 4 Jurist. (N. S.), 387; *Ib.*, 15 Jurist. (N. S.), 860.

<sup>2</sup> *Black v. Archer*, Cowp. (K. B., Eng.), 65.

<sup>3</sup> *Pike v. Hanson*, 9 N. H. 491; *Huntington v. Blaidsell*, 2 N. H. 318; *Huntington v. Schultz*, Harp. (S. C.), 453; 18 Am. Dec. 660; *Emery v. Chesley*, 18 N. H. 198; *Hart v. Flynn*, 8 Dana (Ky.), 190; *Gold v. Bissell*, 1 Wend. (N. Y.), 215; *Buller's N. P. (Eng.)*, 62(a); *U. S. v. Benner*, 1 Bald. 239; *Strout v. Gooch*, 8 Me. 127; *Jones v. Jones*, 13 Iredell (N. C.), 448; *Field v. Ireland*, 21 Ala. 240; *Courtney v. Dozier*, 20 Ga. 369; *Reynolds v. Matthews*, 2 Jurist. 989; *Wood v. Lane*, 6 Car. & P. (N. P., Eng.), 774.

<sup>4</sup> 2 New. 211.

Under similar circumstances, a defendant went with the officer to the magistrate, and it was held to be no arrest. *Arrowsmith v. Le Messurier*, 5 Bos. & Pul. 211.

<sup>5</sup> *Russen v. Lucas*, 1 Car. & P. 153.      <sup>6</sup> *Hill v. Taylor*, 50 Mich. 549.

<sup>7</sup> *Grainger v. Hill*, Bingh. M. Cases, 212, 220; *Arch. Pr.* 72.

11. *Summary of the rule of arrest.* From all the cases and *dicta* on this subject, may be gathered the general principle that whatever practically or theoretically gives to the officer the control of the person of the defendant, constitutes an arrest; that personal seizure in the name of the law is the most obvious, usual, and unequivocal mode of executing process of this character; that a *bona fide* submission evidenced by words, or by the execution of bail bonds or other like instruments, is an adequate substitute for personal contact; that, without such contact, words of arrest by an officer, accepted by the defendant, or not straightway resisted by protest, or flight, or otherwise, constitutes such an arrest as will bind alike the officer, plaintiff, and defendant.<sup>1</sup>

12. *Writ protects officer serving it, when.* The general rule is that a warrant or other writ, regular in form, issued by an officer having competent authority to issue *must* be served by the officer receiving it, and that it completely protects and justifies him in serving it; that he need not inquire into the regularity of the proceedings on which the writ is founded; and that if it be voidable or erroneous, it is a sufficient justification to the officer if he acts on it. But he must see, at his peril, that it is regular on its face, and that it appears to have been issued by a judicial officer having jurisdiction of the subject-matter, and upon legal cause shown.<sup>2</sup>

13. For instance, a warrant issued in blank, no person being named in it, although written in afterward without authority, is void, and is no defense to such officer.<sup>3</sup>

14. And if, for instance, a notary public should issue a warrant for the arrest of a violator of a village ordinance, although the warrant might seem regular in form, it would not be, because signed by an officer having no jurisdiction.

15. And if a justice of the peace should issue an order

<sup>1</sup> Murfree on Sheriffs, § 147.

<sup>2</sup> See pars. 26-28 of Chapter 5; *Newburg v. Munshower*, 29 O. S. 617; *Murfree on Sheriffs*, §§ 100-104, citing very many cases. Also *Drennan v. People*, 10 Mich. 169; *Gurney v. Tufts*, 37 Me. 130, and cases in note below.

The officer is not bound, therefore, to look behind a regular warrant coming from a proper jurisdiction, and can not be held liable for damages in a civil action for making an arrest on such a warrant, although the process may prove to be invalid. See *Cooley on Torts*, 460; *Murfree on Sheriffs*, § 1162.

It is said by eminent English authority that, "although the warrant of the justice be not strictly lawful, as if it express not the cause particularly enough, yet if the matter be within his jurisdiction as justice of the peace, the killing of such officer in the execution of his warrant, is murder, for in such case the officer can not dispute the validity of the warrant." "A different rule," remarks Judge Lumpkin, "would put in jeopardy the life of every officer in the land. It never could be intended that they should determine, at their peril, the sufficiency of every precept put into their hands." *Murfree on Sheriffs*, § 1164.

<sup>3</sup> *Alford v. State*, 8 Tex. Ap. 545; *Rafferty v. People*, 69 Ill. 111.

of arrest before judgment in a civil case in which the affidavit stated no grounds of fraud, such order would not protect the officer, because, in that case, the justice has no jurisdiction.<sup>1</sup>

16. To learn what officers may issue writs to constables, marshals and their deputies, policemen, watchmen, etc., and also what jurisdiction they have, that is, for what offenses, etc., they can issue writs, and what writs they can issue, see Chapter 2.

17. *What is a regular and sufficient warrant* has been defined as follows. "If the warrant is for an offense within the jurisdiction of the justice, and the crime charged is described with sufficient precision to apprise the accused of the offense with which he is charged, the warrant is good and will protect the officer."<sup>2</sup>

18. *Correct name of accused in warrant, arrest of right person, etc.* The person to be arrested must be correctly named or particularly described in the warrant or order of arrest, and the officer must arrest the very person named or described in the writ. If that person is as commonly known by the name in the writ as by his real name, or if the name in the writ has the sound, though spelled differently from the real name, the officer may arrest him.<sup>3</sup> But the officer can not safely arrest Daniel Griswold under a warrant against Samuel Griswold,<sup>4</sup> nor one whose last name only is in the warrant,<sup>5</sup> nor George Alford under a warrant for John Smith,<sup>6</sup> nor any body under a warrant against "persons who are suspected" of offenses charged in the warrant.<sup>7</sup>

19. The arrest of the person intended, but under another person's name and not under his own name, will not, generally, protect the officer.<sup>8</sup> But see par. 22, below.

20. But a warrant may be issued against a person entirely unknown who is described as well as possible therein. Such description must be sufficient to designate on whom it is to be served, by stating his occupation, appearance, peculiarities, residence, or other circumstances by which he could be identified.<sup>9</sup>

21. However, the law knows but one Christian name and the sur-name. So, if a person's name be actually George Washington Middleton, the law is satisfied if he be named

<sup>1</sup> See pars. 3, 4, of Chapter 25.

<sup>2</sup> *State v. Jones*, 88 N. C. 671, 680.

<sup>3</sup> See *Griswold v. Sedgwick*, 6 Cow. 455; *Prell v. McDonald*, 7 Kas. 426; *Alford v. State*, 8 Tex. App. 545; *Grumon v. Raymond*, 1 Conn. 40; *Mead v. Hawes*, 7 Conn. 332; *Com. v. Crotty*, 10 Allen, 403; 2 Taunt. 401; 11 East. 110; 6 T. R. 234; 8 East. 328.

<sup>4</sup> *Griswold v. Sedgwick*, 6 Cow. 455.

<sup>5</sup> *Prell v. McDonald*, 7 Kas. 426.

<sup>6</sup> *Alford v. State*, 8 Tex. App. 545.

<sup>7</sup> *Grumon v. Raymond*, 1 Conn. 40.

<sup>8</sup> See cases in preceding notes; also pars. 20-23.

<sup>9</sup> *Mead v. Hawes*, 7 Conn. 332; *Commonwealth v. Crotty*, 10 Allen. 403.



George Middleton; but it is not offended if he be designated as George W. Middleton or as George Washington Middleton, these latter two ways aiding to identify him by way of description, and to distinguish him from any other George Middleton who might be mistaken for him.<sup>1</sup>

22. And under an order of arrest, if there is a mistake in the name of the defendant, and he has been sued under such wrong name, and he has made no objection on the trial, he can not, when arrested under that name, take any advantage of such wrong naming; and the officer can not, in such case, refuse to serve process on account of said wrong name.<sup>2</sup>

23. In a certain civil case, John O'Shaughnessy was sued on a note made by John Shaughnessy, another person of the latter name, and judgment was rendered by default against said John O'Shaughnessy, who was also known under the name of John Shaughnessy, and he was arrested and imprisoned under a writ under this latter name, which writ was served and returned by an officer who knew that the wrong Shaughnessy was sued and imprisoned. But in an action against said officer for so doing, it was held that he was protected by the writ, and that he was not bound to go behind it, and run the risk of determining facts that would exempt O'Shaughnessy from arrest.<sup>3</sup>

24. It seems, however, that under the rule stated in paragraph 28 of Chapter 5, he could safely have refused to execute such a writ, even though it would protect him if he did execute it.

25. *Reason for arrest must be given, when.* After a person has been arrested, with or without process, he has a right to know from the arresting officer the true reason or ground of his arrest, and such officer must answer any question as to such arrest, and must not assign a false reason therefor, and must not refuse to show the warrant, order, or attachment under which the arrest is made, after he can safely do so. This may, or may not be, before the prisoner is safely confined, or sufficiently secured or guarded to make his escape or rescue improbable.<sup>4</sup>

26. The officer must exercise a sound discretion in this respect, and is liable for any abuse of this discretion.

27. *No unnecessary harshness or violence in making arrests* must be exercised by an officer; and if he inflicts bodily injury upon the person arrested, as by needlessly striking him with a mace, club, or other weapon, or needlessly shoots him, such officer is himself a criminal, liable to punishment. He must use enough force to effect the arrest,

<sup>1</sup> See Swan's Tr., Ch. 9, § 3, note next below.

<sup>2</sup> See Strange. 156, 1218.

<sup>3</sup> O'Shaughnessy v. Baxter, 121 Mass. 515.

<sup>4</sup> See Cin. Police Manual.



and protect himself in case of resistance, but must use none in a wanton, or malicious, or swaggering, or over-zealous way. If no resistance is offered, and no attempt is made to escape, the officer has no right to seize and collar, rudely and with violence, his prisoner.<sup>1</sup>

28. Some of these provisions as to the use of force are more elaborately stated in paragraphs 51-53 below, and as there stated are applicable to civil cases also. But not so of paragraphs 54, 55.

29. *As to use of hand-cuffs, etc.* The officer may use hand-cuffs or other means to prevent the escape of his prisoner if, in his discretion, he thinks it necessary. He would be liable only for a clear abuse of this discretion.<sup>2</sup>

### RELATING TO ARRESTS IN CRIMINAL CASES.

30. *Arrest without warrant, by whom, for what, etc., in officer's presence.* A sheriff, deputy sheriff, constable, marshal, or deputy marshal, watchman, or police officer, must arrest and detain any person found violating *any law* of this state, or *any legal ordinance* of a city or village until a legal warrant can be obtained.<sup>3</sup>

31. It will be noticed that the foregoing paragraph relates to *any criminal offense whatever* occurring in the officer's presence—it relates to "any person found violating" a law or ordinance.

32. *When any person may arrest.* When a *felony* has been committed, *any person may*, without warrant, arrest another who he believes, and has reasonable cause to believe, is guilty of the offense, and may detain him until a legal warrant can be obtained.<sup>4</sup>

33. *What are felonies, and what are misdemeanors.* Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors.<sup>5</sup>

34. *For a statement of what acts are offenses* under the laws of this state, and which ones are felonies, and which ones are misdemeanors, see Chapter 32.

35. *Violation of ordinance is a misdemeanor.* The severest penalty that can be imposed for the violation of an ordinance of a municipal corporation is a fine and imprisonment in a county jail or in a work-house.<sup>6</sup> Such a violation is therefore a misdemeanor, and can not be made a felony.

<sup>1</sup> See *Wright v. Keith*, 24 Me. 158; *Kreger v. Osborn*, 7 Blackf. 74; *State v. Mahon*, 3 Harr. (Del.) 568; *Burns v. State*, 7 S. E. Rep. (Geo.) 88.

<sup>2</sup> *Firestone v. Rice*, 38 N. W. R. (Mich.) 885; *State v. Stalcup*, 2 Ired. 50; *Cochran v. Toher*, 14 Minn. 385.

<sup>3</sup> § 13492. See pars. 40-40b next page; 50 O. S. 189.

<sup>4</sup> § 13493.

<sup>5</sup> § 12372.

<sup>6</sup> §§ 4561-4564.

36. *As to arrest without warrant.* An officer may arrest any one, without a warrant, whom he has good reason to believe is guilty of *felony*, even though it afterward turns out that such belief was a mistaken one, if he has acted in good faith and on reasonable grounds.<sup>1</sup> A reasonable suspicion is sufficient to justify such arrest, whether the suspected person would probably escape before a warrant could be procured or not.<sup>2</sup> A reasonable ground of suspicion, supported by circumstances sufficient to warrant a cautious man in believing that the party is guilty of the offense, is sufficient.<sup>3</sup> So are instructions and information by telegraph from a public officer.<sup>4</sup> So is the existence of a warrant in the hands of another officer.<sup>5</sup>

37. The governor's proclamation that a felony has been committed will justify an arrest of a person whom the officer has good reason to believe is the person described in the proclamation.<sup>6</sup>

38. When an offender is not likely to abscond before a warrant can be obtained, it is, in general, better to apprehend him by a warrant than for a private person or officer to arrest him of his own accord.<sup>7</sup>

39. When it is certain that a felony has been committed, or that a dangerous wound has been given, and the offender, being pursued, takes refuge in his own house, either a private person or an officer may, without any warrant, break open the doors after demand of admittance.<sup>7</sup>

40. Where a breach of the peace is committed in the presence of the officer (in this case a marshal), he may, without a warrant, arrest the persons who participate therein. If, however, the officer was absent when such offense was committed, and did not appear till after the affray had ended, public order restored, and the guilty parties had departed from the vicinity, and all the information the officer had of the affray and of the parties to it, was the statements of bystanders who witnessed it, he had no authority in law to pursue and arrest the persons charged with the offense without first obtaining a legal warrant therefor.<sup>8</sup>

40a. The next preceding paragraph applies to misdemeanors generally, as well as to breaches of the peace.<sup>9</sup> But a person carrying a concealed weapon may be arrested therefor without a warrant, because he is violating the law, or ordinance, or both, when arrested.<sup>10</sup>

40b. Even where such an offense has been committed in the presence of an officer, his power to arrest the offender should be promptly exercised, or it will be lost.<sup>11</sup>

40c. *As to breaking doors, etc., to effect arrest, see Chapter 24.*

41. *Confining prisoner till warrant procured.* When the circumstances are such that the arrested person can not be at once taken before a magistrate, the arresting officer may confine such person in any suitable place till a warrant can be procured. A box car has been held to be a suitable place.<sup>12</sup> A room in the officer's house, in a hotel, or the county or corporation jail, are the most usual places. No doubt in case of arrests by a marshal or policeman, or other such officer, the village or city jail or station-house is the proper place, as they are designed for this purpose among others.

42. Such person may be taken to the county jail, and the jailer should receive him for a reasonable time.<sup>13</sup>

<sup>1</sup> *McCarthy v. DeArmit*, 99 Pa. St. 63; *State v. Grant*, 7 Mo. 236.

<sup>2</sup> *Holley v. Mix*, 3 Wend. 350; *Rohan v. Sawin*, 5 Cush. 281.

<sup>3</sup> *McCarthy v. DeArmit*, above. See *Firestone v. Rice*, 38 N. W. R. 885.

<sup>4</sup> *Castro v. DeUriarte*, 16 Fed. Rep. 93.

<sup>5</sup> *Drennan v. People*, 10 Mich. 169.

<sup>6</sup> *Eames v. State*, 6 Humph. 53.

<sup>7</sup> *Swan's Treatise*, Chapter 73, § 2.

<sup>8</sup> *State v. Lewis*, 50 O. S. 179. See *Reinhart v. City*, 49 O. S. 257.

<sup>9</sup> *Ib.* 184-6, and cases there cited.

<sup>10</sup> *Ballard v. State*, 43 O. S. 340; *State v. Lewis*, 50 O. S. 185.

<sup>11</sup> *State v. Lewis*, 50 O. S. 187-9, and cases cited.

<sup>12</sup> *Arreson v. Thorstadt*, 33 N. W. Rep. (Iowa) 607.

<sup>13</sup> *Burnham v. Morrissey*, 14 Gray 226; *Com. v. Deacon*, 8 S. & R. 47.

43. *How long may arrested person be detained without warrant.* The officer must bring a person so arrested before a magistrate, and must procure a warrant, as soon after the arrest as he reasonably can.<sup>1</sup> How long this is must depend on the circumstance of each case. If he delays unreasonably, he is liable to prosecution for false imprisonment, even if the arrest was lawful. He may keep a drunken person till he becomes sober. The time of arrest, the nearness and accessibility of the magistrate, the facilities of travel, the weather, the prisoner's health, and similar matters, are all to be taken into account. The officer should act as promptly as practicable, and not delay at all if he can reasonably avoid it.<sup>2</sup>

44. *As to discharging arrested person by arresting officer.* It has been held that if an arrest is made by an officer on reasonable suspicion of felony, without warrant, and his suspicion vanishes, he may discharge the arrested person without bringing him before a magistrate at all, if he has not detained him an unreasonable time.<sup>3</sup> But it has also been held that the officer is liable for false arrest if he so discharges a person so arrested, unless such person expressly waives his right to be so taken before a magistrate.<sup>4</sup>

45. *Notice of arrest.* The arrested person should be notified in some way that he is arrested by lawful authority.<sup>5</sup> Showing or reading to him the warrant is of course sufficient notice. So is the sight by him of the officer's badge of office, or uniform,<sup>6</sup> or the fact that he is arrested while actually committing a criminal offense, or being immediately pursued from the scene of his crime, or by the arresting person or officer stating his intention to arrest and his reason therefor.<sup>7</sup>

46. Where an officer, authorized by statute to make arrests without a warrant, finds a person in the act of committing a criminal offense, it is not necessary to the lawfulness of an attempt to arrest him to first inform him of the charge upon which the attempted arrest is made, where the officer and the cause of arrest are known to the offender.<sup>8</sup>

47. Yet it is always safest and best to inform the person about to be arrested, of the charge upon which he is arrested, when it can be done without causing an escape.

<sup>1</sup> § 13492.

<sup>2</sup> See *Arreson v. Thorstadt*, 33 N. W. Rep. (Iowa), 607; *Tubbs v. Turkey*, 3 Cush. 438; *Potter v. Swindle*, 3 S. E. Rep. (Geo.) 94; *Johnson v. Americus*, 46 Geo. 80; *State v. Parker*, 75 N. C. 249; *Cochran v. Toher*, 14 Minn. 385; *Burke v. Bell*, 36 Me. 317.

<sup>3</sup> *Bell v. Burke*, above.

<sup>4</sup> *State v. Parker*, 75 N. C. 249; *Caffrey v. Drugan*, 11 N. E. Rep. (Mass.) 96; *Brock v. Stimson*, 108 Mass. 520; *Phillips v. Fadden*, 125 Mass. 193.

<sup>5</sup> *State v. Phinney*, 42 Me. 384; *Drennan v. People*, 10 Mich. 169.

<sup>6</sup> *Yates v. People*, 32 N. Y. 509.

<sup>7</sup> *People v. Pool*, 27 Cal. 572.

<sup>8</sup> *Wolf v. State*, 19 O. S. 248.



48. *When warrant need not be shown.* The officer need not show the warrant to the person arrested in the following cases: (1) When the offense charged in the warrant is a felony, as in such cases the arrest may be made without any warrant being in existence even.<sup>1</sup> (2) When the offense charged is a misdemeanor which occurred in the officer's presence, for then, also, no warrant is needed.<sup>2</sup> (3) When the person arrested has notice of authority to arrest such as designated in paragraphs 45, 46, above.<sup>3</sup> (4) When the offense charged is a misdemeanor, not committed in the officer's presence, and the officer in good faith refrains from showing the warrant till after the arrest is made, and the prisoner is safe from escape or rescue, lest his prisoner escape or be rescued, he is justified, even if no such notice as mentioned above was given.<sup>4</sup> His first duty is to make the arrest directed by the warrant.

49. *When warrant must be shown.* It follows that when the offense charged is a misdemeanor, not committed in the officer's presence, and the accused demands to see the warrant, and it can be shown without probably allowing the accused to escape arrest, the warrant must be exhibited or read to him. If so doing would probably result in such an escape, the arrest should be made first, and the warrant be shown as soon as may be safely afterward, as stated above.

50. Probably the chief reason for this right to see the warrant is to enable the accused to know whether or not the arrest is to be made under lawful authority, since, if it be not by such authority, the arrest may lawfully be resisted.<sup>5</sup>

51. *When the officer may use force; as to resistance and escape.* The officer may use physical force, and as much of it as is necessary, to effect any arrest he has a right to make; and if he can not alone make the arrest, he may call the bystanders, or even the whole power of the county, to help him. If the person sought to be arrested resists the officer or those so called on to help him, such officer and assistants may repel force by force, even to the extent of taking the life of the person resisting arrest. But no unnecessary force can be so used.<sup>6</sup>

<sup>1</sup> See paragraph 30 of this chapter.

<sup>2</sup> See paragraph 32 of this chapter; also, *Wolf v. State*, 19 O. S. 248.

<sup>3</sup> *Commonwealth v. Cooley*, 6 Gray, 350; *State v. Townsend*, 5 Harrington.

<sup>4</sup> See *Commonwealth v. Cooley*, 6 Gray, 350; *State v. Phinney*, 42 Me. 384; *Drennan v. People*, 10 Mich. 169.

<sup>5</sup> See cases in note 3, next above; *State v. Lewis*, 50 O. S. 184-7.

<sup>6</sup> See par. 53 and notes thereto; *Wolf v. State*, 19 O. S. 248; *Murfrees on Sheriffs*, § 1164; *Chitty's Crim. L.* 55; *Hale's Pleas of the Crown*, 494; and any standard work on criminal law. See note to par. 53.

In a prosecution for manslaughter against such officer for killing the deceased while in the attempt to arrest him without a warrant, and it appearing that the deceased, knowing the officer and the cause



52. Like any other person, an officer may use as much force as is necessary in self-defense when he is attacked by persons resisting arrest or otherwise. But he must first be attacked, and must also be in reasonable fear of death or of great bodily harm, to justify him in killing any person in self-defense. Mere threats alone will not be any such justification.<sup>1</sup>

53. If any person charged with an offense under any law or ordinance has been arrested, and attempts to break away from the arresting officer or resists him, such officer may repel force with force, and need not give back; and if such person is unavoidably killed by the officer in such struggle, the killing is justifiable.<sup>2</sup>

54. *As to shooting at a fleeing person sought to be arrested.* An officer attempting, with or without a warrant, to arrest a person for a *felony*, or to recapture a person escaping from such an arrest, may shoot at such person fleeing from arrest or recapture, *if* he can be taken in no other way. In any case, he should be called on to stop before being shot at, if within hearing.<sup>3</sup>

of arrest, violently resisted the arrest, it was in effect held to be lawful for the officer to use force in return to make the arrest, and to defend himself from the attack of the offender, without notice to him of the cause of arrest, or of the abandonment of the attempt to make the arrest. *Wolf v. State*, above.

The following temperate extracts from the Cincinnati Police Manual (containing chiefly rules governing the police of that city) are worthy of consideration by all officers:

"Every policeman must recollect that, in making an arrest, he is not justified in doing more than is necessary for the safe custody of the prisoner while in his charge. It is the duty of a policeman to keep his prisoner safely, but he has no right to use unnecessary violence, and must not use such language as would be calculated to provoke or exasperate him; such conduct tends to create resistance in the prisoner, and a hostile feeling among the bystanders toward the policeman."

"Policemen should not become offended at any harsh or abusive language that may be applied to them, and should not make arrests in their own quarrels or those of their families, except under very grave circumstances—such as would justify them in using measures of self-defense."

<sup>1</sup> See note to preceding paragraph.

<sup>2</sup> "The cases, where the prisoner is not to forfeit any goods or chattels, but is to be absolutely acquitted, if he kills in his own defense: . . .

4. An officer or bailiff that, in the execution of his office, kills a person that assaults him, though the officer gives not back to the wall, for the officer is under the protection of the law, and the books tell us it is not felony in such case. . . . 5. The same law is of a constable that commands the king's peace in an affray and is resisted. 6. He that kills a felon that resists, . . . and the like of a constable or watchman that is charged to take a person charged with felony, or attempts to take him upon hue and cry, if the person charged resist or fly, and can not be otherwise taken, though perchance he be innocent, . . . and this either before or after arrest." *Hale's Pleas of the Crown*, 494; *Murfree on Sheriffs*, § 1164. See also next note.

<sup>3</sup> *Chitty's Crim. L.* 62; *Wolf v. State*, 19 O. S. 248.

In the case of *State v. Belch*, tried in the Hamilton County Court of Common Pleas, and intended to be a test case, in 1888, the defendant

55. An officer attempting, with or without a warrant, to arrest a person for a *misdemeanor*, or a violation of a city or village ordinance, or to recapture a person fleeing from such an arrest, has *no* right to shoot at such a person, even though he can be taken in no other way, and has been called on to stop or he would be shot.<sup>1</sup>

## RELATING TO ARRESTS IN CIVIL CASES ONLY.

56. *No arrests in civil cases without writ.* In civil actions, no lawful arrest can be made unless the writ commanding it be in existence; and it ought to be in possession of the officer making the arrest. Such an arrest would not be made lawful by delivering to the officer a proper writ after the arrest.<sup>2</sup>

57. *Where arrests may be made.* The arrest may lawfully be made at any place within the township, and upon any river or water-course which divides the township from a neighboring state.<sup>3</sup>

58. *As to breaking open doors, etc., to make arrest,* see Chapter 24.

59. *As to who is exempt from arrest, in civil cases,* see Chapter 23.

60. *Notice of arrest, in civil cases.* The provisions in paragraphs 45-50, above, about notice of arrest, apply to civil cases, with this important difference, however, that many arrests can be made in criminal cases without warrant, while in civil cases no arrest can be made unless a writ therefor is issued before the arrest is made. Such parts of

being a policeman of Cincinnati, indicted for manslaughter for shooting a fleeing offender probably guilty of a misdemeanor, Judge S. R. Matthews, whose decisions were seldom questioned by the bar or reversed by the upper courts, in charging the jury, after able argument by counsel, declared the law to be as follows: (1) That a policeman may arrest a thief who has stolen goods in his possession, without waiting until a warrant has been sworn out, provided his information that the goods have been stolen is not mere hearsay. (2) A policeman may shoot at an escaping prisoner, provided the prisoner has been arrested for a felony, and it is absolutely necessary to shoot at him in order to prevent his permanent escape. (3) A policeman has no right to shoot at an escaping prisoner who has been guilty of a misdemeanor only. The defendant was convicted, and no effort was made to carry the case to a higher court. It was never reported, except in the local newspapers.

These paragraphs, 54 and 55, are but the logical expression of the principles governing the use of force, given in paragraphs 51-53, above, as applied to the use of firearms as instruments of such force. They would apply equally as well to the use of a dagger, or lance, or other deadly weapon, under the same circumstances.—[ED.]

In any case, a felon must not be killed in endeavoring to effect his arrest, if the officer can capture him without such severity, by obtaining assistance or otherwise, *Williams v. State*, 44 Ala. 41.

<sup>1</sup> See note next above.

<sup>2</sup> *Hall v. Roche*, 8 Term. 187; *Bell v. Jacobs*, 4 Bingh. 523.

<sup>3</sup> § 11756.

those provisions as apply to arrests under a warrant already issued apply to arrests in civil cases also.

61. *By whom arrest to be made.* The officer, or deputed person to whom the order of arrest is directed, must be so far acting in the arrest, as to be engaged either at the place where the arrest is made, or elsewhere, in the endeavor to make the arrest. It is not necessary that the officer, or deputed person, should make the arrest, or even be within sight when the arrest is made; he can not, however, go upon another business, or stay at home and send an unauthorized person to execute the order; but if engaged in efforts to arrest—as, for instance, if he leaves the place for the purpose of calling on the power of the county to assist him—he is constructively present, and the assistants he has left may make the arrest.<sup>1</sup>

62. *Enticing into jurisdiction not allowed.* Officers are not permitted to entice persons into a particular jurisdiction, by fraud, tricks, misrepresentation, etc., for the purpose of arresting them. Where, by false statement or fraudulent pretense, a party is brought within the jurisdiction, and there served with process, the service will be set aside.<sup>2</sup>

63. The officer should make reasonable search for goods, if there be a probability of finding any, before making the arrest. If, on inquiry of the defendant, he say he has no goods subject to levy, the officer will, so far as the debtor is concerned, be justified in making an immediate arrest, without further inquiry, unless he knows that the defendant is asserting a falsehood; for the plaintiff to the execution is entitled to a levy on goods, if there be sufficient liable to the execution.<sup>3</sup>

64. If the defendant pays the amount due, or if he turns out personal property sufficient to pay the amount due and costs, the constable must not make the arrest; or, if the defendant does either, after the arrest and before being committed to jail, the constable must discharge him. Property thus taken will be sold as upon other levies, and return made of the sale as in other cases.<sup>4</sup>

65. If the debtor request it, the constable must take him before the commissioner of insolvents. If the commissioner give the debtor a certificate for his discharge under the insolvent laws, the constable must then discharge him, and return, with the writ, a copy of the certificate.<sup>5</sup>

66. If the debtor already has such certificate, and shows

<sup>1</sup> Swan's Treatise, 83, citing 7 Cow. 269; Comp. 65; 10 Johns. 85.

<sup>2</sup> See *Carpenter v. Spooner*, 2 Sandf. 717; *Goupil v. Simonson*, 3 Abb. Pr. 474; *Seaver v. Robinson*, 3 Duer, 622.

<sup>3</sup> Swan's Treatise, Chap. 23, § 3.

<sup>4</sup> § 11750, and Swan's Treatise, Chap. 23, § 3.

<sup>5</sup> § 11159. See also *Ex parte Scott*. 19 O. S. 581.



it to the constable, he must make a copy of it, and discharge the debtor from custody.<sup>1</sup>

67. *Escape and recapture.* An escape is voluntary, when the officer permits the arrested person to escape; negligent, when the party escapes without the consent of the officer.<sup>2</sup>

68. The officer can be charged with an escape only when he has had the party actually in custody by lawful authority.<sup>3</sup>

69. In case of negligent escape, the debtor may be retaken by the officer even on Sunday; and if immediately pursued, may be retaken in any other township or county. Such retaking, before suit against the officer, or the debtor's voluntary return, relieves him from all responsibility.<sup>4</sup>

70. The officer may prove, in mitigation of the damages he becomes liable for from such escape, the insolvency of the judgment debtor.<sup>5</sup>

<sup>1</sup> § 11174.

<sup>2</sup> Murfree on Sheriffs, § 196; Swan's Treatise, Chap. 23, § 4

<sup>3</sup> Murfree on Sheriffs, § 192; Swan's Treatise, Chap. 23, § 4.

Upon an order of arrest issued before judgment, and, it seems, by the statute, upon an order of arrest issued after judgment, the officer may permit the prisoner to go at large, provided he has him at the return of the writ; and as, under an order of arrest issued after judgment, the officer may thus, without fault, and after arrest, suffer the defendant to go at large before the return day, being only responsible therefor in case he fail to have the money, or the person of the debtor in custody, at the expiration of the return day of the writ, it would seem to follow that the officer may, at any time before the return day of the writ, but not probably afterward, retake a debtor who is at large by the voluntary permission of the officer. In this respect, therefore, the powers, duties, and responsibilities of an officer under an order of arrest issued after judgment, are precisely the same as upon an order of arrest issued before judgment. Swan's Treatise, Chap. 23, § 1.

<sup>4</sup> 4 Blachf. 193; 2 Conn. 473.

<sup>5</sup> Richardson v. Spenser, 6 O. 13; Hootman v. Schriner, 15 O. S. 43.



## CHAPTER 23.

## PRIVILEGE FROM ARREST.

## IN CRIMINAL CASES.

1. *Who exempt from.* No ambassador or minister accredited from a foreign power to the United States or to any other government, no member of the retinue, including domestics and domestic servants, of any such ambassador or minister, can be arrested, either with or without process, under any law or by any officer of Ohio or of any other state. Any such arrest would subject the officer or person making it to very severe penalties.<sup>1</sup>

## IN CIVIL AND CRIMINAL CASES.

2. *Who exempt—Exceptions.* The following persons are privileged from arrest in both civil and criminal cases, as set forth below, *except* that these privileges do not apply to cases of *treason, felony, or breaches of the peace.*<sup>2</sup>

3. *First.* Members, clerks, sergeant-at-arms, door-keepers, and messengers of the senate and house of representatives of the State of Ohio, during sessions of the general assembly, and while traveling to and from such sessions, allowing one day for every twenty-five miles of the distance, by the route most usually traveled; and whoever arrests any such person in violation of this provision is liable to a fine of one hundred dollars, to be recovered by civil action, in the name and for the use of the person injured.<sup>3</sup>

4. *Second.* Electors, while going to, returning from, or in attendance at elections.<sup>4</sup>

5. *Third.* Judges of the courts, while attending court, and also during the time necessarily employed in going to, holding, and returning from the court which it is their duty to attend.<sup>5</sup>

6. *Fourth.* Attorneys, counsellors at law, clerks, sheriffs, coroners, constables, and criers, and all suitors, jurors, and

<sup>1</sup> See §§ 711, 4063, 4064, U. S. Rev. Stat., and cases cited under them.

<sup>2</sup> See Const. of U. S., art. 1, sec. 6; Const. of Ohio, art. 2, sec. 12; art. 5, § 3; § 11756, and statutes cited in following notes.

<sup>3</sup> Const. Ohio, art. 2, § 12; § 11756.

<sup>4</sup> Const. Ohio, art. 5, § 3; § 11756.

<sup>5</sup> § 11754.

witnesses, while going to, attending, or returning from court.<sup>1</sup>

7. *Fifth.* Israelites, and such other persons as religiously observe the last or any other day of the week as a day of worship, on such day, within, going to, or returning from their places of worship, or during the time of service, and while going to or returning therefrom.<sup>1</sup>

8. *Sixth.* A person doing militia duty under the order of his commanding officer, or while going to or returning from the place of duty or parade.<sup>1</sup>

9. *Seventh.* United States senators and members of Congress, during their attendance at the session of their houses, and in going to and returning from the same.<sup>2</sup>

10. *Eighth.* Ambassadors or other public ministers of any foreign prince or state, authorized or received as such by the president of the United States; and also all domestics or domestic servants of any such public minister.<sup>3</sup> But this will not shield any citizen or inhabitant of the United States from arrest for any debt contracted before entering into the service of such minister;<sup>4</sup> nor does such exemption from arrest apply to consuls or their servants.<sup>5</sup>

11. *Ninth.* *When and where arrests may not be made.* No person can be arrested during a sitting of the senate or house of representatives, within the hall where such session is being held, or in any court of justice, during the sitting of such court, or on the first day of the week, commonly called Sunday, or on the fourth day of July.<sup>9</sup>

### IN CIVIL CASES.

12. *First.* Females, and officers and soldiers of the revolutionary war, on any mesne or final process for any debt, claim, or demand arising upon contract.<sup>1</sup>

14. *Third.* Commissioned and non-commissioned officers, artificers, privates, musicians, seamen, and marines, enlisted in the service, or in the army of the United States, whether militia or of the regular army, are exempt, during their term of service, from arrest for any debt or contract.<sup>6</sup> And no such non-commissioned officer, musician, or private, can be arrested or taken in execution for any debt under the sum of twenty dollars, contracted before enlistment, nor for any debt contracted after enlistment.<sup>8</sup>

<sup>1</sup> § 11754.

<sup>2</sup> Constitution of U. S., Art. 1, § 6.

<sup>3</sup> U. S. R. S., §§ 711, 4063.

<sup>4</sup> U. S. R. S., § 4065.

<sup>5</sup> 3 M. & S. 284.

<sup>6</sup> U. S. R. S., §§ 1237, 1610.

<sup>8</sup> U. S. R. S., § 1237.

<sup>9</sup> § 11755.

15. *Fourth.* An insolvent debtor, having a certificate of insolvency from the probate or common pleas court, or from a commissioner of insolvents, is free from arrest or imprisonment for any debt or demand mentioned in his schedule, except debts and demands for money or property received while acting in a trust capacity, such as a public officer, administrator, executor, guardian, etc.<sup>1</sup>

16. If such insolvent be arrested and produces such certificate, the arresting officer should take a copy thereof and release the insolvent. If not released under such circumstances, the insolvent could hold the officer liable for damages for not releasing him.<sup>2</sup> The officer should annex this copy to his return. See paragraphs 50-51, Chapter 25.

### GENERAL PROVISIONS.

17. *Certain trustees, officers, etc., not to be arrested.* Generally, no order of arrest can be issued against persons sued in their representative capacity, such as executors, administrators, township trustees, officers of public or private corporations.<sup>4</sup> But if the writ does not disclose their representative character, the constable will not be liable should he arrest any of them.<sup>5</sup>

18. *The officer may decline to arrest,* if, before making the arrest, he is satisfied beyond any doubt that the defendant is privileged from arrest, and claims his privilege, in which case he must make return of the privilege.<sup>4</sup> See, for instance, paragraph 16.

19. *A person too sick to be removed* is usually not arrested while such removal would endanger his life. See further as to this, paragraph 20 of Chapter 25.

20. *What arrests lawful.* All arrests, not contrary to the provisions herein contained, made in any place, or on any river or water-course within or bounding upon this state, are lawful.<sup>6</sup>

<sup>1</sup> §§ 11160, 11175.

When a discharge has been obtained in another state under insolvent laws which exempt the person from imprisonment, but leave the future acquisitions of the debtor (as in Ohio) liable to execution, it will not protect the debtor from arrest and payment of the debt here. But if the insolvent laws of another state not only discharge the debtor from imprisonment, but also discharge the debt itself, then he can not be arrested here upon the debt, nor can payment be enforced. Swan's Treatise, 67, 68, citing 2 Cow. 626; 1 Ohio, 236; 2 Conn. 633; 12 Johns. 142.

<sup>2</sup> §§ 11160, 11163.

<sup>4</sup> Swan's Treatise, Chap. 10, § 11.

<sup>5</sup> See par. 28, Chap. 5.

<sup>6</sup> § 11756. If, during a session of the general assembly, a member or officer thereof be arrested upon a charge of treason, felony, or breach of the peace, notice thereof must be given forthwith to the body



21. *How and when prisoner may be discharged.* A person arrested contrary to the provisions of this chapter must be discharged by a writ of habeas corpus, or in a summary way, by motion before the court from which the process issued, at the cost of the party who sued out the process.<sup>1</sup>

22. *Privilege must be claimed.* This privilege from arrest is a *privilege* which the person arrested, or about to be arrested, must *claim* if he wants it. If he neglects to claim it, or waives it, he stands on the same footing as a person not entitled to the privilege.<sup>2</sup>

23. *Not officer's duty to decide about it.* The very general rule is, that the officer making the arrest under process regular on its face, and issued by a court of competent jurisdiction, has nothing to do with deciding whether or not the arrested person is entitled to this privilege. That is a question for a court to decide, and the person arrested must get the court to decide it by asking for a writ of *habeas corpus*, or by a motion made to the court.<sup>3</sup> The arresting officer has nothing to do with that motion or *habeas corpus*. He is a *ministerial*, not a *judicial* officer, and *his* duty is to obey the writ directed to him, if it be regular on its face, and arrest the person named therein, and take him before the judicial officer who issued it, where the arrested person can apply or arrange for his discharge, if entitled thereto.<sup>4</sup>

24. The exception to this course is where the person whose arrest is ordered has documentary evidence in his possession showing that he is exempt from arrest, as in case of an insolvent having a certificate, as specified in paragraph 15, above; and where the arrested person is too sick to be removed, as stated in paragraph 20 of Chapter 25.

with which he is connected, by the officer who issued the process upon which the arrest is made. § 13505.

<sup>1</sup> § 11757.

<sup>2</sup> See *Gill v. Miner*, 13 O. S. 182; *Ib.* 200.

In deciding that case of *Gill v. Miner* (page 200), the court say: "It will be observed that the statute denominates these exemptions *privileges* from arrest. Such we think they are. Privileges—personal privileges—privileges personal to the person arrested, which he may waive or insist upon as he may choose; and with which the officer making the arrest, under process regular on its face, and issued by a court of competent jurisdiction, has nothing to do, except to obey such process until it is superseded by an order of paramount authority; and to see to it that the prisoner is furnished with reasonable facilities to apply for his discharge on *habeas corpus* or on motion."

Where a sheriff is sued for an escape, on an execution, he can not plead in defense that the defendant to the execution was a suitor at a court on the day of his arrest, and was, therefore, privileged from arrest. The sheriff should have required the defendant to the execution to have obtained his discharge by a *habeas corpus*. *Ib.* 182.

<sup>3</sup> See note last above.

<sup>4</sup> See pars. 4 of Chap. 3; 26-28, Chap. 5.



## CHAPTER 24.

## AS TO FORCIBLY ENTERING HOUSES, BREAKING DOORS, ETC., TO SERVE WRITS, MAKE ARRESTS, ETC., IN CIVIL AND CRIMINAL CASES.

## GENERAL RULE.

1. *A person's house is his castle.* It is a principle of law that a person's dwelling-house is his castle, and that therefore, if its outer door be shut, it protects, from all legal process therein, himself, his children, his domestic servants, his permanent boarders, and all others who are a part of his family or who have made his house their home;<sup>1</sup> and perhaps even his mere guest;<sup>2</sup> and even an officer has no right to open, nor to break open, such door, even if he first ask for admittance and it be refused him; and merely lifting the latch is, for this purpose, as much a breaking as forcing a door bolted with iron.<sup>3</sup>

2. *This rule does not apply to barns, vacant houses, etc.* The privilege allowed a dwelling does not extend to a barn or warehouse disconnected from it, and forming no part of the inclosed space around the house. They may be broken open to make service of process, either on the body or goods.<sup>4</sup>

3. Dwelling-house used fraudulently to cover property from execution, or a vacant house, so used, may be lawfully broken open, without demand of entry, to levy on such goods placed there.<sup>5</sup> The officer will be liable for *unnecessary* damage done in entering.<sup>6</sup>

## IN CRIMINAL CASES.

4. *Officer may break outer doors, etc., to execute warrant.* The statute provides that in executing a warrant for the arrest

<sup>1</sup> See *Semayne's Case*, 5 Coke, 92; *Lee v. Gansell*, 1 Cowp. 1; *Walker v. Fox*, 2 Dana, 404; *Oystead v. Shedd*, 13 Mass. 520; *Curtiss v. Hubbard*, 1 Hill (N. Y.), 336.

<sup>2</sup> 1 Hill, 336, above; but see 13 Mass. 520, above.

<sup>3</sup> 1 Hill, 336, above; 2 Dana, 404, above.

<sup>4</sup> *Burton v. Wilkinson*, 18 Vert. 186,

<sup>5</sup> *Stitt v. Wilson, Wright*, 505.

<sup>6</sup> *Ib.* See also par. 19 this Chap.

of a person charged with an offense, or a search-warrant, the officer may break open any outer or inner door or window of a dwelling-house or other building, if, after notice of his office and purpose, he be refused admittance; but this is not intended to authorize any officer executing a search-warrant to enter any house or building not described in the warrant.<sup>1</sup>

5. *And before warrant issues, when.* When an officer immediately pursues a person who has committed a felony, or who is reasonably suspected of having done so, it is the officer's duty to follow such person wherever he may go, and if he takes refuge in any house or building, the officer, after stating his office and object, and demanding admission, and admission being refused, may forcibly open the outer door or windows, enter the house or building, and arrest the offender.<sup>2</sup>

6. Forcibly opening an outer door is generally a violent and dangerous proceeding, and should be done only in extreme cases, and when an immediate arrest is necessary. But when necessary, it should be done promptly rather than let the offender escape

7. *In case of misdemeanors.* It will be noticed from paragraph 4 above, that "*in executing a warrant for the arrest of a person charged with an offense,*" whether it be a misdemeanor or a felony, the officer may break open *any* door. But if the officer is pursuing, without a warrant, an offender guilty, or reasonably believed to be guilty, of a misdemeanor, and he takes refuge in his home, the officer should demand admittance, state his office and object, and if he be then denied admittance, he may break open the outer door.<sup>2</sup>

8. *As to inner doors,* see paragraph 17-19, below, applicable here also.

### IN CIVIL CASES.

9. An officer holding an execution for goods, or a summons, or an order of arrest for a person, in a civil case, has no right to enter the dwelling-house of the defendant to serve such writ if its outer door be closed.<sup>3</sup>

10. If, however, the officer had, in arresting a defendant, succeeded in touching him, and he had fled into his house or into the house of another, the officer could break down the outer door or window, if necessary, to complete his

<sup>1</sup> § 13504.

<sup>2</sup> See Murfree on Sheriffs, §§ 156, 1163, and cases there cited.

<sup>3</sup> See authorities in note 1 to par. 1 this Chapter. Also Chitty Criminal Law, 61; Hale's Pleas Crown, Chap. 19, § 12; Clark v. Cleveland 6 Hill, 344; Gano v. Hall, 42 N. Y. 67; Butt v. Jones, 1 Neil Gow. N. P. 99.

arrest and carry off his captive, if he first states what officer he is, and his object, and demands admittance, and this is refused him.<sup>1</sup>

11. And if the service of a writ of execution has once properly commenced, and the defendant shut up the goods in his dwelling, the officer may, after making the statements and demand above mentioned, force outer doors to complete his levy.<sup>2</sup>

12. If the officer find the outer door open, or if he knock at it when shut and he is asked to walk in, he may lawfully enter the outer door,<sup>3</sup> even if he gain peaceable entry by false pretenses.<sup>4</sup>

13. After a party has once been actually arrested and escapes from custody, the right of the officer to break open doors and windows, after notice of his office and purpose, still continues.<sup>5</sup>

14. An officer can not break the outer door of a person not a party to the suit, to make such arrest or levy, when the defendant, or his goods, are in such house without intention of avoiding the writ. But if the defendant flee to, or conceal his goods in the house of another, to avoid the process, or if the owner of the house purposely secrete the defendant or his goods there, the outer door may be broken open after demand for admission has been made and refused.<sup>6</sup>

15. But, in such case, the officer should be quite sure that the person or goods sought are in the house of a stranger to the writ, before he breaks into it, or if, being lawfully inside, he breaks down inner doors; for, it is only if such person or goods are there that he is justified in so doing. If not found there, the officer is liable as a trespasser, however just the grounds for believing that they were there; and the damages awarded against him will be nominal, or compensating, or vindictive, according to the circumstances of the case.<sup>7</sup>

16. If an officer breaks open an outer door when he is not justified in so doing, he is liable to an action, and the arrest or levy will be void.<sup>8</sup>

<sup>1</sup> 3 Blackst. Com. 288. *Sandon v. Jervis*, 4 Jurist. (N. S.) 737; *Semayne's Case*, 5 Coke, 92; *Johnston v. Leigh*, 6 Taunt. 246; *Cooke v. Birt*, 5 Taunt. 765.

"The house of any one is not a castle or privilege, but for himself, and shall not extend to protect any person who flies to his house." *Semayne's Case*, above.

<sup>2</sup> *Glover v. Whittenhall*, 6 Hill, 597.

<sup>3</sup> *Munfree on Sheriffs*, § 157.

<sup>4</sup> *Rex v. Backhouse*, Lofft. 61.

<sup>5</sup> *Chitty Crim. Law*, 58; *Swan's Treatise*, 865.

<sup>6</sup> *Burton v. Wilkinson*, 18 Ver. 186; 16 Pick. 553; *Ib.* 156.

<sup>7</sup> *Johnston v. Leigh*, 6 Taunt. 246; *Curtiss v. Hubbard*, 1 Hill, 336; *Morrish v. Murray*, 15 Mees. & W. 52.

<sup>8</sup> 12 Pick. 270; 24 Wend. 369.

17. *As to breaking inner doors, etc.* Having lawfully passed through the outer door, the officer may lawfully break through any inner door, or into any closet, trunk, or other hiding place, in his search for either the person or the goods he is seeking; and it has been held that he need not first demand admittance through such inner doors, etc., if he has reasonable ground to suspect that such person or goods are within, and the circumstances show that a demand of admittance would not probably be complied with.<sup>1</sup> But as an officer is never justified in doing mere wanton damage, he should, in all practicable cases, first ask admittance before forcibly he breaks such doors, etc.

18. *What is an inner door?* When the entire house is let out in lodgings to different persons, and has but one common door of entrance, every separate apartment, or suite of apartments, is the dwelling-house of its or their occupants, and must be so respected.<sup>2</sup> But if the landlord occupies a part of such house, though he have but a single room, he is in law the occupant of the whole house, and a legal entrance by the outer door insures a legal entry to all the rooms of the house.<sup>3</sup>

19. Some houses are so constructed as to be occupied by either one or two families, having two doors opening on the street, and a door communicating between the separate compartments. If such a house is occupied by two persons, against one of whom process is held, the officer having gained access to the house through the outer door of the other, can not force the door between the compartments, unless it has been of common use and passage at the pleasure of both, either to go out of the house, or as a way to the interior. If it has so been used, however, it may be forcibly entered to make the arrest or levy.<sup>4</sup>

20. *No unnecessary damage should ever be done* in effecting any such forcible entry. If an officer breaks open a house, when he could have entered by means of a key, an action will lie against him as a trespasser.<sup>5</sup> If the first entry was accomplished by craft, and then used to effect the violence intended, the first entry is unlawful, and the officer liable for any outrage committed in executing the process.<sup>6</sup>

<sup>1</sup> See *Semayne's Case*, 5 Coke, 92; *Ratliffe v. Burton*, 3 Bos. & P. 233; 4 Taunt 620; 16 Johns. 288.

<sup>2</sup> *Lee v. Gansell*, 1 Comp. 1; *Williams v. Spencer*, 5 Johns. (N. Y.) 352; *Fitch v. Loveland*, Kirby (Conn.) 386; 1 Leach, 80, 237, 427.

<sup>3</sup> 9 B. & C. 185

<sup>4</sup> *Stedman v. Crane*, 11 Metc. 295.

<sup>5</sup> *Dalton*, 354. See also par. 2 above.

<sup>6</sup> *Hob.* 62, 263. See par. 16, p. 149.



## CHAPTER 25.

## ARREST IN CIVIL CASES BEFORE JUDGMENT.

1. Imprisonment for debt has long been abolished in Ohio; but in some cases in which fraud and debt are combined, the creditor who has brought suit against the debtor to secure payment of the debt may, in that suit, have the debtor arrested for some fraud he has committed or tried to commit to the injury of the plaintiff. The proceedings relating to such arrest are not a separate suit, but are incidental to or a part of the civil suit for the recovery of the debt, and are as follows:

2. *For what causes order of arrest issued, and the affidavit.* An order for the arrest of the defendant in a *civil* action must be made by the justice of the peace before whom that action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent, or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars: *First.* That the defendant has removed or begun to remove any of his property out of the county with intent to defraud his creditors. *Second.* That the defendant has begun to convert his property or any part thereof into money for the purpose of defrauding his creditors. *Third.* That he has property or rights in action which he fraudulently conceals. *Fourth.* That he has assigned, removed, or disposed of, or has begun to assign, remove, or dispose of his property, or any part thereof, with intent to defraud his creditors. *Fifth.* That the defendant fraudulently or criminally contracted the debt or incurred the obligation for which suit is about to be brought. *Sixth.* The affidavit must also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.<sup>1</sup>

3. *A statement of facts to justify belief is essential.* No right to issue such an order of arrest exists at all, *unless the affi-*

<sup>1</sup> § 10247.

No person shall be imprisoned for debt, in any civil action, on *mesne* or final process, unless in cases of fraud. Constitution of Ohio, art. 1, sec. 15.

affidavit for the order contains a statement of the facts *claimed to justify the belief* in the existence of the particular fraudulent act; and an order which is issued on an affidavit which does not contain such statement, is void for want of legal authority in the justice to issue it, and an arrest under it is illegal.<sup>1</sup>

4. A statement of facts in the affidavit which have a legal tendency to induce such belief, though such facts be slight and inconclusive, will nevertheless sustain such order until it is set aside or reversed; the issuing an order under such circumstances is a mere error in judgment.<sup>1</sup>

5-10. *Form of affidavit for order of arrest before judgment* should be substantially as follows:

E. F., Plaintiff,	} Before C. D., a justice of the peace
v.	
G. H., Defendant.	
	in and for — township, —
	county, Ohio.

The affiant, E. F., makes oath that — is the plaintiff [or, agent; or, attorney for E. F., plaintiff] in the premises; that the claim in the above named action is for [*here is stated the nature of plaintiff's claim, for instance, labor done for the defendant, at his request, etc., as may be*].

And the deponent also makes oath that said claim is just, and that there is due and unpaid thereon [*state how many*] dollars.

Said deponent also makes oath that, as he verily believes, the said defendant [*here are stated one or more of the particulars mentioned in paragraph 2 above, as, for instance, has removed; or, begun to remove his property out of the county with intent to defraud his creditors*].

The said deponent further makes oath that the grounds of that belief, being facts within his own knowledge, and information from others which he believes to be true, are in substance as follows: [*here are stated facts, etc., which lead to the belief that defendant is guilty of the fraud charged. See paragraphs 3, 4*].

E. F.

Sworn to and subscribed before me, this 20th day of May, A. D. 19—. C. D., Justice of the Peace.

11. *When order may issue.* The order of arrest may be made to accompany the summons, or may be issued at any time afterward before judgment.<sup>2</sup>

12. *Undertaking of plaintiff.* The order of arrest can not legally be issued by a justice of the peace until there has been executed by the plaintiff, if a resident freeholder of the township where suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written undertaking, in not less than double the amount of the plaintiff's claim, as stated in the affidavit, to the effect, that the plaintiff

<sup>1</sup> Spice v. Steinruck, 14 O. S. 213.

<sup>2</sup> § 10248.

iff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained.<sup>1</sup>

13. *What order for arrest must contain, and to whom delivered.* The order of arrest must be addressed and delivered, with a copy of the affidavit, to a constable of the proper township; it must state the names of the parties, the amount of the plaintiff's claim specified in the affidavit, be signed by the justice of the peace issuing it, and must require the constable to arrest the defendant and bring him forthwith before said justice.<sup>2</sup>

14. It will be noticed that, in this case, the *magistrate* makes a copy for the ministerial officer to use. But it is not a copy of a writ in the hands of the latter officer, so that the remarks about making copies, found in paragraph 14 of Chapter 3, do not apply.<sup>3</sup>

15. *The form of the order of arrest, returns thereon, etc.,* will be found below in this chapter.

16. *How order of arrest executed.* The officer receiving that order of arrest, must execute it by forthwith arresting the defendant, and delivering to him a copy of the order of arrest, and the copy of the affidavit mentioned above.<sup>4</sup>

17. As to how arrests are made, and many important matters connected therewith, see Chapter 22.

18. *The arrested person may, after arrest, at once secure his release,* by paying, or causing to be paid to the arresting officer, or plaintiff, the claim of the plaintiff as specified in the affidavit, and the costs of suit, as indicated in the next paragraph.

19. *Arrested person to be taken before magistrate, etc.* Unless the claim of the plaintiff specified in the affidavit and costs of suit are paid, or unless discharged from custody by order of the plaintiff, the defendant so arrested must be taken by such constable forthwith before the justice of the peace by whom said order of arrest was issued; and kept in custody until discharged by law.<sup>5</sup>

<sup>1</sup> § 10249.

<sup>2</sup> § 10250. See next note.

<sup>3</sup> In other words, the magistrate who issues the order of arrest gives it, and the copy of the affidavit mentioned in paragraphs 1 to 10 above, to the arresting officer. This latter officer must make a copy of the order of arrest, but not a copy of the affidavit, to be given to the person arrested.

<sup>4</sup> § 10251.

<sup>5</sup> § 10251.

"The officer, after the arrest, may, at his own risk, permit the defendant to go at large for a period of time which will not materially delay taking him before the justice. For, although the law requires the defendant to be taken before the justice forthwith after the arrest, a delay of an hour or more could not be deemed unreasonable; and if the defendant was arrested in the night, it would be proper for the constable to hold him in custody until the morning, and then take him before the justice. There should not, however, be any unneces-



20. *The arresting officer will be excused from producing the defendant*, if the latter be so sick that removal would endanger his life, or if he be rescued from the officer by superior force under circumstances not showing negligence on the part of the officer.<sup>1</sup> In case of such sickness, the officer should protect himself by a physician's certificate to the effect that such sickness exists. See pars. 44-45.

21. *The form of the order of arrest*, if issued as a separate writ, either accompanying the summons, or afterward, may be as follows:

22-23—

The State of Ohio, — county, — township, ss.

To A. B. [*or, To any*], constable of said township:

You are hereby ordered to arrest G. H., and bring him forthwith before me, C. D., a justice of the peace of said township, at my office, to answer the action of E. F. against said G. H., pending before me, in which the said E. F. claims [*insert amount stated in the affidavit*] dollars; and have then and there this order.

Witness my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace [*or, Mayor.*]

26. Or said order may, in that case, be the same as the next form, omitting the words “and that at the time of the arrest of the said G. H., you summon him to appear at once before me, the said justice, at my office in the aforesaid township.”

27. *Form of order of arrest with summons.* Frequently, when the order of arrest, and the summons in the action, are issued at the same time, they are united into one writ, which may be in form as follows:

28-33—

State of Ohio, — county, — township, ss.

E. F., Plaintiff,

v.

G. H., Defendant.

} Order of arrest, with summons.

To any constable of said township, greeting.

You are hereby required to arrest the said defendant, G. H., and him bring forthwith before me, C. D., a justice of the peace within and for the township aforesaid, at my office therein, and that at the time of the arrest of the said G. H., you summon him to appear forthwith before me, the said justice, at my office in the aforesaid township, to answer the action of said plaintiff, E. F., who claims of the said defendant in said action now pending before me, the sum of \$— for labor done for said defendant, at his

sary delay in taking the defendant, as soon as it can be reasonably done, before the justice.” Swan's Treatise, Ch. 10, § 8.

<sup>1</sup> 3 Eng. C. L. 179; 6 Eng. C. L. 425; Cro. Jac. 419; 8 East. 171; 1 B. & Ald. 190; 1 Stra. 432.



request [*etc., as may be*]. And of this writ make legal service, and return the same to me, according to law.

Given under my hand, this 20th day of May, A. D. 19—.

C. D., Justice of the Peace.

34. *Certificate on the copy.* On the copy delivered to defendant, the officer should make the following certificate:

35—

I certify that the within and foregoing is a true copy of the original writ, and of the indorsements thereon.<sup>1</sup>

A. B., Constable [*or, Marshal, etc.*].

36. *Items of arresting officer's fees* must be indorsed on the writ, substantially as follows (see paragraphs 36, 37, of Chapter 5):

Service and return of summons..... \$

Copy.....

Service and return of order of arrest.....

Copy.....

Service of copy of affidavit.....

Mileage, — miles.....

---

Total..... \$

37. *Form of "return" on the writ.* A return must be indorsed on the writ, stating what the officer did. It will generally be somewhat as follows:

38-40—

On [*state what day, etc.*], I took the body of the within G. H., and delivered to him a copy of this order, and the copy of affidavit received herewith from the justice of the peace [*or, mayor, etc.*].

A. B., Constable [*or, Marshal, etc.*].

41-42. Or as follows:

The within named defendant not found.

A. B., Constable.

43. *Other forms of return* must be adopted when the circumstances require it, as, for instance:

44-45. *Form when defendant is too sick to arrest.*

I proceeded forthwith to the residence of the said G. H., for the purpose of arresting him. He was then, and still remains, so sick and infirm, that without endangering his life I can not arrest him as I am commanded within, as will further appear from physician's certificate hereto attached.

A. B., Constable.

46-47. *Form when defendant becomes sick after arrest, and before return day.*

Arrested the within named G. H., who remains under my custody, so ill and infirm, that without great peril and probable danger of his life, I can not have his body before the

<sup>1</sup> If the order of arrest contain no summons, the words "*and foregoing and of the indorsement thereon*" may be omitted from this certificate.

court within named, as I am herein commanded as further appears from physician's certificate hereto attached.

A. B., Constable.

48-49. *Form when defendant is privileged from arrest.* The within named G. H., at the time of the delivery of this order to me, and from thence hitherto, has been and still is [state the ground of exemption, as, for instance, a juror serving in the Court of Common Pleas of — county]. Therefore I did not arrest him as within I am commanded.

A. B., Constable.

50-51. *Form when defendant is discharged by commissioner of insolvents.*

On —, 19—, I duly arrested the within named G. H. and delivered to him personally a copy of the within order and copy of the affidavit received herewith from the justice [or, mayor], and thereupon, at his request, I took him before the commissioner of insolvents of — county, Ohio. And then the said G. H. produced to me the certificate of said commissioner, a copy of which is herewith returned. In obedience with said certificate, I discharged the said G. H. from custody.

A. B., Constable.

52-53. *Form when one defendant is found and another not.*

On —, 19—, I took the body of the within named G. H. and delivered to him a certified copy of the within writ, and the copy of the affidavit received herewith from the justice of the peace. The within named R. X. not found within my jurisdiction.

A. B., Constable.

54-55. *Form when defendant is released by order of plaintiff.*

On —, 19—. I took the body of the within named G. H. and delivered to him a certified copy of this writ, and the copy of the affidavit received herewith from the justice of the peace. But said G. H. was since discharged by me from custody by order of the within named plaintiff, E. F.

A. B., Constable.

56-59. *Form when defendant is discharged by habeas corpus.*

On —, 19—, I took the body of the within named G. H. and delivered to him a certified copy of this writ, and the copy of the affidavit received herewith from the justice of the peace. Afterward, on —, 19—, by virtue of a certain writ of habeas corpus to me directed, I conveyed the said G. H. before the Hon. S. M., in said writ named, judge of [state what court], who, upon examination into the cause of the arrest and detention of said G. H. upon the within order forthwith discharged the said G. H. therefrom, as will appear by the order of the said judge hereto annexed.

A. B., Constable.

60. Return to the justice of the peace with the order of arrest a copy of the judge's order of discharge.

61-62. *Form when defendant escapes after arrest.*

On —, 19—, I took the body of the within named G. H. within my bailiwick, and delivered to him a copy of this order and the copy of affidavit received herewith from the justice of the peace. But afterward the said G. H. with force and arms rescued himself out of my custody, and ever since then the said G. H. has not been, nor is he now, found within my jurisdiction. A. B., Constable.

63-64. *Form when defendant is rescued by others.*

On —, 19—, I took the body of the within named defendant, G. H., and gave him a copy of this writ and the copy of the affidavit received herewith from the justice of the peace. But afterward, on —, 19—, one L. M. and N. O. and others unknown to me with force and arms assaulted me, and rescued the said G. H. out of my custody, and the said G. H. with force and arms rescued himself, and escaped out of my custody, and afterward, and since, the said G. H. not found in my jurisdiction.

A. B., Constable.

65. *As to return of summons.* When an order of arrest is issued in a case, the ministerial officer should make return of the summons at the same time he makes return of the order of arrest, so that the trial may then proceed, even if the summons commands its return to be made at a later day.

66. *Proceedings after arrest; prisoner must be released after forty-eight hours, unless.* Upon the return of said order of arrest, so executed, the trial of said cause must proceed, unless for good cause shown, upon the application of either party, or at the instance of the justice himself, it be continued for any period, as is provided for in other cases before justices of the peace; and when the trial of said cause is continued for any period, the defendant, upon executing with one or more sufficient sureties, a written undertaking to the plaintiff in the premises, and to the acceptance of the justice, to the effect that if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon, must be discharged from custody. But in no case can the defendant be detained in the custody of the officer when said continuance has been for more than forty-eight hours, unless said continuance has been made at the instance or with the consent of the defendant himself.<sup>1</sup>

<sup>1</sup> § 10252.

“If the defendant is brought before the justice under an order of arrest, and declines either to give an undertaking as within mentioned, or to make a deposit of money with the justice, the effect of an adjournment of the cause beyond the period of forty-eight hours from the time the defendant is brought before the justice (unless done at the instance or with the consent of the defendant), will be to discharge the defendant from custody; for the statute provides, ‘that in no case shall the defendant be detained in the custody of the officer, when the continuance has been for a period beyond forty-

67. The constable or marshal have nothing to do with the preparation or giving of this undertaking.

eight hours, unless said continuance has been made at the instance, or with the consent of the defendant himself.

"If the continuance is beyond forty-eight hours at the instance or with the consent of the defendant, he remains in the custody of the officer until the trial; unless he makes a deposit of money, or causes an undertaking to be entered into, as before mentioned. If the continuance is beyond forty-eight hours without the consent of the defendant, and the defendant is discharged from custody on that account (he having given no undertaking and made no deposit), the action will proceed to trial and judgment, or be adjourned for trial, as if no order of arrest had been issued.

"If the defendant gives the undertaking, or makes the deposit, the action may be adjourned and tried as in other cases.

"It will then be observed that a defendant, in custody upon an order of arrest, issued before judgment, may insist:

"1. Upon giving the undertaking, or making the deposit of money above mentioned. If either be done, he must be discharged from custody; and then the action may be adjourned for like period, and upon like showing, and either party may have a trial under like circumstances as if no order of arrest had been issued, and the action was proceeding on the summons.

"2 If no undertaking is given, or deposit made, the defendant may insist that the trial shall not be adjourned beyond forty-eight hours. If it is, without his consent, he must be discharged from custody; and if so discharged, the action proceeds to trial, or adjournment, etc., as if no order of arrest had been issued." Swan's Treatise. Chap. 12.



## CHAPTER 26.

## ARREST IN CIVIL CASES AFTER JUDGMENT.

1. The statements in paragraphs 3 and 4 of Chapter 25 apply as fully to this chapter as to that one. Read them, and also all of Chapter 22.

2. After a judgment has been obtained against the defendant, in a civil suit before a justice of the peace, if then the defendant is in the custody of the officer, upon an order of arrest before judgment, or if, after judgment against him, there is filed in the office of such justice an affidavit of the plaintiff, his authorized agent, or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars specified for order of arrest before judgment, said justice of the peace must, unless otherwise ordered by the plaintiff, issue an execution, and accompany the execution with an order for the arrest of the defendant.<sup>1</sup>

3-10. *Affidavit for order of arrest after judgment.*

E. F., Plaintiff,	} Before C. D., a justice of the peace
v.	
G. H., Defendant.	
	in and for — township, —
	county, Ohio.

The affiant, E. F., makes oath and says that he is the plaintiff [*or, the agent or attorney of the plaintiff*] in the premises; that on or about the — day of —, A. D 19—, said E. F. recovered a judgment against the said G. H. before C. D., a justice of the peace in and for said township, in said county, for the sum of — dollars and — cents, of which amount there is still due the sum of \$—, and for which the said E. F. is entitled to execution; the said judgment being in full force for that amount yet unpaid.

Said deponent also makes oath and says that, as he verily believes, the said defendant [*here state the particular or fraud, as in the affidavit in paragraph 2 of Chapter 25*].

The said deponent further makes oath and says that the grounds of that belief, being facts within his own knowledge, and information from others, which he believes to be true, are in substance as follows: [*here state facts inducing belief, as in the affidavit last mentioned.*]

E. F.

<sup>1</sup> § 10425.



dollars shall not be paid, or an amount of property of the said G. H., defendant, whereon to levy execution sufficient to satisfy the same can not be found in your county, to arrest the said defendant, G. H., and deliver him to the sheriff of the county aforesaid, to be committed by him, the said sheriff, to the jail of the said county of —, and kept in custody until discharged by law. Make return of your execution hereof within thirty days from your receipt of this order.

Given under my hand this — day of —, 19—.

C. D., Justice of the Peace.

21. *Items of fees to be indorsed on the writ (see paragraphs 36, 37, Chapter 5.*

Service and return of order of arrest....\$

Copy of order of arrest. ....

Service of copy of affidavit.....

Mileage, — miles.....

[*Other items, if any.*].....

Total.....\$

22-23. *Form of certificate on the copy delivered to defendant.*

I certify the within to be a true copy of the original order of arrest, and that the accompanying affidavit was delivered to me with said order of arrest by the within named justice of the peace.

A. B., Constable.

24-25. *Form of certificate on the copy left at the county jail.*

I certify the within to be a true copy of the original order of arrest, and of my return thereon.

A. B., Constable.

26-27. *Form of return, when arrest and commitment are made.*

Sufficient personal property of within named defendant not found to satisfy the judgment within set forth, and for want thereof, I delivered a copy of this process [and affidavit, *if there was any filed*] to said defendant, and arrested and delivered him to the sheriff of — county, with whom I left a certified copy of this writ.

A. B., Constable.

28-29. *Form of return, when defendant is already in prison.*

Sufficient personal property of within named defendant not found to satisfy the unsatisfied judgment within set forth; and said defendant not arrested as herein commanded, since at the time of the receipt of the within writ by me, the within named defendant was in custody in the jail of — county, at the suit of E. F., and from thence, and until and at the return hereof, was, and is, in said custody at the suit of said E. F., plaintiff, against him.

A. B., Constable.



30-31. *Form of return, when the money is paid.*

This writ satisfied, —, 19—, by the payment of the required amount of money. A. B., Constable.

32. *For other forms of return, follow the first form above through and including the words "and for want thereof," and then finish as in the forms given in the case of arrest before judgment, in Chapter 25.*

#### ARREST UNDER AN EXECUTION AGAINST THE PERSON.

33. *For what causes an execution against the person may issue.* An execution against the person of the debtor may be issued upon any judgment for the payment of money:—(1) When the judgment debtor has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment. (2) When he has property, rights in action, evidences of debt, or interest or stock in a corporation or company, which he fraudulently conceals with the like intent. (3) When he has assigned or disposed of all or part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution. (4) When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered. (5) When the judgment was rendered for money, or other valuable thing, lost by playing at any game, or by means of any bet or wager. (6) When he was arrested on an order before judgment, and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made.<sup>1</sup>

34. *Requisites of such execution.* An execution against the person of the judgment debtor requires the officer to arrest such debtor, and commit him to the jail of the county until he pays the judgment, or is discharged according to law.<sup>2</sup>

35. *May be issued by justice of the peace.* A justice of the peace may issue an execution against the person of a judgment debtor, upon being satisfied of the existence of one or more of the particulars set forth in paragraph 33, above, by the affidavit of the judgment creditor, or his attorney, and such other evidence as may be presented.<sup>3</sup>

36. *For the form of such execution, see paragraphs 20-24 of Chapter 11.*

37. *When issued of course.* When the judgment debtor was arrested before judgment, and has not been released from imprisonment by an application for relief as an insolvent debtor, and the order for such arrest has not been

<sup>1</sup> § 11745.

<sup>2</sup> § 11744.

<sup>3</sup> §§ 11746, 11747.



adjudged improper, an execution against the person of such judgment debtor may issue of course.<sup>1</sup>

38. *Discharge by delivery of property.* A person taken in execution as aforesaid must be discharged by delivering or setting off to the officer who serves the writ, if issued from a court of record, real or personal property, or if issued by a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ was issued.<sup>2</sup>

<sup>1</sup> § 11748

<sup>2</sup> § 11749.

## CHAPTER 27.

## ARRESTS FOR CONTEMPT.

1. *Contempts which may be punished.* A justice, mayor, police judge, or any one acting as such by proper appointment, may punish, as for a contempt, persons guilty of the following acts, and no others: (1) Disorderly, contemptuous, or insolent behavior toward the magistrate, tending to interrupt the due course of trial, or other judicial proceeding before him. (2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial, or other judicial proceeding. (3) Willful resistance in the presence of the magistrate, to the execution of a lawful order, or process, made or issued by him.<sup>1</sup>

2. *Arrest, trial, and sentence in such case.* A warrant of arrest may be issued by such magistrate, on which the person so guilty may be arrested and brought before the magistrate, when an opportunity to be heard in his defense, or excuse, must be given; the magistrate may thereupon discharge him, or may convict him for the offense, and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days.<sup>2</sup>

3. *Warrant of commitment; what to contain.* The conviction, specifying particularly the offense and the judgment thereon, must be entered in his docket; a warrant of commitment to the jail of the county, until the fine is paid or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and it must be executed by any proper ministerial officer to whom it is given, and by the jailer of the county.<sup>3</sup>

4-9. *The form of the warrant of arrest* may be substantially as follows:

The State of Ohio, Hancock County,                    } ss.  
The Municipal Corporation of Findlay. }

To the marshal of said corporation, greeting:

Whereas, on the — day of —, 19—, before me, the undersigned, mayor of said corporation, at my office therein, a certain trial [or, proceeding, etc., as may be] was progressing, when one G. H. then and there willfully interrupted

<sup>1</sup> §§ 1735, 4557.

<sup>2</sup> §§ 1736, 4557.

<sup>3</sup> §§ 1737, 4557.

the due course of said trial [*or, proceeding, etc.*] by [*here is stated what G. H. did or was guilty of, as, boisterous conduct, or, insolent behavior toward me, the said mayor, etc.*]

You are therefore commanded to arrest forthwith said G. H., and bring him before me to answer for said contempt; and for so doing, this shall be your warrant.

Given under my hand and official seal, this — day of —, 19—.

[SEAL.]

C. D., Mayor.

10-16. *The form of warrant of commitment in such case may be substantially as follows:*

State of Ohio, Hancock County, }  
The Municipal Corporation of Findlay. } ss.

To the jailer of said county [*or, superintendent of — work-house*], greeting:

Whereas, the below named G. H. has been by me, the undersigned, mayor of said municipal corporation, tried and found guilty of a contempt of court committed before me, the said mayor, as will more fully appear from the following transcript from my docket, to wit: [*Here will be a copy of the docket of said proceeding against G. H.*]

You are therefore hereby commanded to receive the said G. H. and to confine him in the jail of said county [*for the period of one day or more, or this part will be omitted, as the facts require, and*] till he pay said fine of — dollars, and the costs, being — dollars and — cents, or till he be otherwise duly discharged according to law.

Given under my hand and official seal, this — day of —, 19—.

[SEAL.]

C. D., Mayor.

17. *The service, return, etc., of this writ must be as directed in paragraphs 4 to 14, especially the first part of paragraph 9 of Chapter 5, which see.*

18. *Exemptions from such arrest.* There are probably no exemptions from such arrests for contempt, except such as apply to criminal cases given in Chapter 23.

## CHAPTER 28.

## ARRESTS IN CRIMINAL CASES, AND PROCEEDINGS THEREUNDER.

1. *Certain matters already considered, where.* Many matters concerning the nature of arrests, and how made, when arrests may be made without warrant, and when not, the warrant and its requisites, have already been considered in Chapter 22, whose first two subdivisions (pars. 1-55) should carefully be read by the ministerial officer before acting under this one. See also paragraphs 6 and 7 of Chap. 33.

2. That chapter contains chiefly important principles decided by the courts to be the law. This chapter contains chiefly laws as enacted by the legislature, as to proceedings in criminal cases before magistrates, various forms and constables', marshals', and policemen's duties concerning the same.

3. *When and by whom arrests to be made, and what for.* As has already been more fully stated,<sup>1</sup> a constable, marshal, deputy marshal, watchman, or policeman *must* arrest any person found violating *any law or ordinance* until a legal warrant can be obtained.

4. Also, that when a *felony* has been committed, *any person may*, without warrant, arrest another whom he believes, and has a reasonable cause to believe, to be guilty of the offense, and may detain him until a legal warrant can be obtained.

5. For the definition of felony and misdemeanor, see par. 33 of Chapter 22; and for a list of offenses against the laws of Ohio, stating which of them are felonies, and which misdemeanors, see Chapter 32.

6. *Security for costs of prosecution.* When the offense charged is a misdemeanor, the magistrate may, before issuing the warrant, require the complainant, or some other person, if he considers the complainant wholly irresponsible, to become bound for the costs in case the complaint be dismissed; but no such bond can be required of a sheriff, deputy sheriff, constable, marshal, or deputy marshal,

<sup>1</sup> See pars. 30-33 of Chap. 22.



watchman or police officer, when in the discharge of their official duties.<sup>1</sup>

7. *What warrant to contain, and to whom directed.* The warrant must be directed to the sheriff or to any constable of the county, or, when it is issued by an officer of a municipal corporation, then to the marshal or other police officer of such corporation. It must show, by a copy of the affidavit inserted therein, or annexed and referred to, or recite, the substance of the accusation; and must command the officer forthwith to take the accused and bring him before the magistrate or court issuing the warrant, or some other magistrate of the county having cognizance of the case, to be dealt with according to law.<sup>2</sup>

8. *Who may issue warrants.* Justices of the peace, mayors, and police judges, may issue process for the apprehension of any person charged with an offense, and execute the powers conferred and duties enjoined in the penal laws of Ohio.<sup>3</sup>

9. *When warrant to issue.* When an affidavit charging any person with the commission of an offense is filed with such magistrate, he must, if he has reasonable ground to believe that the offense charged has been committed, issue a warrant for the arrest of the accused.<sup>4</sup>

10-15. *Usual form of such warrant—*  
The State of Ohio, — county, ss.

To any constable of said county, greeting:

Whereas, complaint in writing has been made before me, one of the justices of the peace in and for the county aforesaid, upon the oath of E. F., that G. H. did, on or about the — day of —, A. D. 19—, in the county aforesaid [*here the nature of the offense committed is described*]. These are, therefore, to command you to take the said G. H., if he be found in your county, or if he shall have fled, that you pursue after him into any other county within this state, and him take and safely keep, so that you have his body forthwith before me, or some other magistrate having competent jurisdiction, to answer the

<sup>1</sup> § 13499.

<sup>2</sup> § 13500.

<sup>3</sup> § 13494.

<sup>4</sup> § 13496.

§ 13497 provides that an affidavit substantially in the form following is sufficient:

The State of Ohio, — county, ss.

Before me, C. D., personally came A. B., who, being duly sworn according to law, deposes and says that on or about the — day of —, at the county of —, one G. H. [*here describe the offense committed as nearly according to the nature thereof as the case will admit*].

C. D.

Sworn to and subscribed before me, this — day of —, —.

C. D., Justice of the Peace.

said complaint, and be further dealt with according to law.

Given under my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace.

16. *Accused may be pursued and arrested in any county.* If the accused flee from justice, the officer holding the warrant may pursue and arrest him in any county of this state, and convey him before the magistrate or court issuing the warrant, or other magistrate or court of the county having cognizance of the case.<sup>1</sup>

17. *Warrant may issue in other county.* If a person charged with an offense abscond or remove from the county in which such offense is alleged to have been committed, a magistrate of the county in which such person is found may issue a warrant for his arrest, and removal to the county in which the offense is alleged to have been committed, to be there delivered to any magistrate of such county, who must cause the person so delivered to be dealt with according to law; and the warrant so issued will have the same force and effect as if issued from the county in which the offense is alleged to have been committed.<sup>2</sup>

18. If the warrant directs the removal of the accused to the county in which the offense was committed, the officer holding the warrant must deliver the accused to some magistrate of such county, to be dealt with according to law; and all the necessary expense of such removal, and reasonable compensation for his time and trouble, must be paid to such officer, out of the treasury of such county, upon the allowance and order of the county auditor.<sup>3</sup>

19. *Must bring arrested person before magistrate.* When the officer holding the warrant arrests the accused, he must take him before the proper magistrate.<sup>4</sup>

20. *Return of warrant.* The arresting officer, having indorsed and signed a proper return on the warrant, must deliver the warrant to the magistrate.<sup>4</sup>

21-22. *Form of return on warrant—*

May 21, 19—. I have the body of the within named G. H. now in custody [or, now in court].

A. B., Constable.

23. *Subpoenas.* At some time after the return of the warrant, the magistrate will probably issue subpoenas for witnesses, to testify at the hearing of the case, both for and against the accused. As to such subpoenas, see Chapter 7, especially paragraphs 3 and 18-29.

24. *Summons for jury* may also be issued, especially if the trial be for the violation of an ordinance of a municipal corporation. As to this, see Chapter 8.

<sup>1</sup> § 13502.

<sup>2</sup> § 13503.

<sup>3</sup> § 13493.

<sup>4</sup> § 13506.

25. *Attachments for witnesses or jurors* may be issued to the ministerial officer to serve. As to these, see Chapter 10.

26. *Adjournment, recognizance and commitment during examination.* The magistrate may, for any just cause, adjourn the examination of the accused, and commit the accused, from time to time, for safe-keeping, to the jail of the county, until the cause of delay is removed, and no longer; but the whole time of such confinement in jail must not exceed four days; or, the officer having in custody any such person may, by the written order of the magistrate, detain him in custody in some secure and convenient place other than the jail, to be designated by said magistrate in his order, not exceeding four days.<sup>1</sup> But he must permit the accused to give bond for his appearance at the time required after adjournment, instead of so committing him.<sup>2</sup>

The mayor of a municipal corporation having a jail or other place of safe-keeping for such persons, orders the commitment of the accused, during such adjournment, to such jail, instead of to the county jail, if no such bond is given.

27–31. *Form of commitment pending examination.*

The State of Ohio, — county, ss:

To the keeper of the jail of the county aforesaid, greeting:

Whereas, G. H. has been arrested on the oath of E. F., for [*here is described the offense according to the facts*], and has been brought before me for examination, and the same has been necessarily postponed by reason of [*here is stated the cause of delay, according to the fact*]. Therefore, I command you, in the name of the State of Ohio, to receive the said G. H. into your custody, in the jail of the county aforesaid [*or in such other place as the justice shall name, if this be not directed to the keeper of the jail*], there to remain until discharged by due course of law.

Given under my hand, this — day of —, 19—.

C. D., Justice of the Peace.

32. *Form of return on warrant.*

May 21, 19—. By virtue of this writ, I have this day committed the body of the within named G. H. to the jail of — county, Ohio, and have left with the jailer thereof a certified copy of this writ. A. B., Constable.

33. *Sustenance of prisoner.* The officer in whose custody any person is detained must provide for the sustenance of such prisoner while in custody.<sup>1</sup>

34. *Order on jailer for prisoner.* When the accused has been committed to the jail of the county, as mentioned in paragraph 26, above, the magistrate should send an order

<sup>1</sup> § 13507.

<sup>2</sup> § 13508.



substantially as follows to the jailer, as his warrant for releasing the prisoner into the care of the ministerial officer:

35-40. *Form of order on jailer for prisoner—*

The State of Ohio, — county, ss.

To any constable of — county, greeting:

Whereas, G. H. has been arrested on a warrant issued by me, C. D., one of the justices of the peace in and for said county, on a charge of [state here].

And whereas, said G. H. was committed to the jail of said county, on account of the postponement of his trial to the — day of —, A. D. 19—, at — o'clock — M.

You are, therefore, hereby commanded to receive the said G. H. from the custody of the keeper of said jail, so that you have his body before me, at the time aforesaid, to answer in the premises.

Given under my hand, this — day of —, A. D. 19—.

C. D., Justice of the Peace.

41. *Return on such order, etc.* The officer so receiving the prisoner should conduct him to the place of hearing before the magistrate, and then make the same return on this writ as given in paragraphs 21-22, above, in this chapter.

42. *Preliminary trial or hearing before magistrate.* When the accused is brought before the magistrate, and there is no plea of guilty, he must, as soon as may be, in the presence of the accused, inquire into the complaint; and if it appear that an offense has been committed, and that there is probable cause to believe the prisoner guilty, he must order him to enter into a recognizance, with good and sufficient surety, in such an amount as he may deem reasonable, for his appearance at the proper time, before the proper court; otherwise, he must discharge him from custody; but if the offense charged is a misdemeanor, and the accused, in a writing subscribed by him, and filed before or during the examination, waive a jury, and submit to be tried by the magistrate, he may render final judgment.<sup>1</sup>

43. The constable, or marshal, as the case may be, must be present at the trial. See paragraphs 1, 2, of Chapter 9.

44. If, upon the whole examination, it appear that no offense has been committed, or that there is not probable cause for holding the prisoner to answer the offense, he must be discharged.<sup>2</sup>

45. *If the accused gives the bond* ("enters into the recognizance") mentioned in the paragraph 42 above, he is discharged, and the constable has no further duties in that case to perform.

46. If he does not give the said bond when required

<sup>1</sup> § 13511.

<sup>2</sup> § 13513.



so to do, he is committed to the county jail to await the action of the grand jury on his case.<sup>1</sup>

47-51. *Form of final mittimus or commitment in such case—*  
The State of Ohio, — county, ss.

To the keeper of the jail of the county aforesaid, greeting:

Whereas, G. H. has been arrested on the oath of E. F. for [here is stated the offense committed], and has been examined by me on such charge, and has been required to give bail in the sum of — dollars for his appearance before the court of common pleas [or, probate court, if so] of said county, on the first day of next term thereof [or, forthwith, if so], which requisition he has failed to comply with.

Therefore, in the name of the State of Ohio, I command you to receive the said G. H. into your custody in the jail of the county aforesaid, there to remain until he be discharged by due course of law.

Given under my hand, this — day of —, A. D. 19—.  
C. D., Justice of the Peace [or, Mayor].

52. The officer, having received a writ substantially like the foregoing, then at once makes a copy of said writ and a certificate thereon, as in paragraphs 53-54 below, and then takes it and the prisoner to the jail of the county, and delivers to its jailer, the prisoner, and said copy.

53-54. *Form of certificate on copy of commitment left with jailer—*

I certify that the within is a true copy of the original writ.  
A. B., Constable [or, Marshal].

55. *Return of original writ, etc.* The officer then makes out on the original writ the following return, and then delivers it to the magistrate who gave it to him.

56-58. *Form of return on original writ—*

May 22, 19—.

By virtue of this writ, I have this day committed the body of the within-named G. H. to the jail of — county, Ohio, and have left with the jailer thereof a certified copy of this writ.

A. B., Constable [or, Marshal].

59-61. *The itemized statement of fees must be made on the writ, as required by paragraph 36 of Chapter 5, which may be substantially in form as follows:*

CONSTABLE'S FEES ON THIS WRIT.

Service and return.....	40
Copy.....	25
Mileage, 16 miles.....	95
(Add other items, if any).....	—

Total.....\$

<sup>1</sup> §§ 15312 (92 v. 99), 13528.

62. *Commitments to work-house outside of county or municipality.* The commissioners of any county or the council of any municipality, wherein there is no work-house, may agree with the city council, or other authority having control of the work-house of any city in any other county, or with the board of district work-houses having a work-house, upon terms and conditions upon which persons convicted of misdemeanors, or of the violation of any ordinance of such municipality, by any court or magistrate of such county or municipality having no work-house, may be received into such work-house under sentence of such court or magistrate; and may pay the expenses incurred under such agreement.<sup>1</sup>

63. *Sentence of accused.* Provision is made as to what sentence may be imposed on the convict sent to such work-house by the judge or magistrate, including imprisonment for fine and costs, and as to working out such fine and costs at sixty cents a day, if not paid otherwise.<sup>2</sup> But with this, the transporting officer has nothing at all to do, and can in no way be affected, even if the sentence be excessive or illegal.

64. *Transcript etc.* In cases of such convictions by any other court than the common pleas court, or by any magistrate, such court or magistrate must make a certified transcript of the docket in such case, which must be delivered to the marshal, or constable, or sheriff by such court or magistrate. This transcript must be delivered by such officer to the proper officer in charge of such work-house, and will be his warrant for detaining such person in custody therein. In all cases of such sentences, the person so sentenced may be confined in the jail of the county for such period as may be reasonably necessary for the officer to procure the papers and make arrangements to transport him to such work-house.<sup>3</sup>

65. *As to mittimus, and officer's return, in such cases.* Although the statute does not expressly say here that a mittimus must be issued, the usual course of procedure in all similar cases requires that one be issued, and one probably should be issued in these cases. The transcript mentioned in paragraph 64 above seems, however, to take the place of the copy of the mittimus, which the ministerial officer has to make and deliver to the jailer in other cases. If such mittimus be given him, he should make return thereon as follows:

66. —, 18—. By virtue of this writ, I have this day committed the body of the within named G. H. to the [name the work-house], and have left with the superintendent

<sup>1</sup> § 12384. A constable can not commit to a work-house in another county a prisoner found guilty of violating a state law unless the sentence so provides, although the writ directs such confinement. *Young v. State*, 11 O. C. C. (N.S.) 466, 21-31 O. C. D. 1.

<sup>2</sup> § 12386.

<sup>3</sup> § 12388.

thereof a certified copy of this writ, and the transcript given to me by the within named magistrate for that purpose.

A. B., Marshal.

67. If no mittimus be given him, the officer should make, on a separate paper, a report substantially as follows:

68. —, 19—. I have this day committed the body of G. H. to the [*name the work-house*], and have left with the superintendent thereof the transcript of the trial of said G. H., given me with said prisoner for that purpose.

A. B., Marshal.

69. *Transporting officer's fees.* The officer transporting any person to such work-house is entitled to the following fees therefor: six cents per mile for himself, going and returning, and five cents per mile for transporting each convict, and five cents per mile, going and coming, for the services of each guard, to be allowed as in penitentiary cases, the number of miles to be computed by the usual routes of travel.<sup>1</sup>

70. *Commitments to work-house outside of municipality, but inside of county.* When a person over sixteen years of age is convicted of an offense, under the law of the state or an ordinance of a municipal corporation, and the tribunal before which the conviction is had is directed by law to commit the offender to the county jail or corporation prison, the court, mayor, or justice of the peace, as the case may be, may sentence the offender to the work-house, if there is such house in the county.<sup>2</sup>

71. *A return in the mittimus* in such case must be made, which may be in the same words as in paragraph 66 above, omitting all after the second "writ" therein.

<sup>1</sup> § 12384.

<sup>2</sup> § 4128. But when a commitment is made from a city, village, or township in the county, other than in the municipality containing such work-house, the council of such city or village, or the trustees of such township, must transmit with the mittimus a sum of money equal to forty cents per day for the time of such commitment, to be placed in the hands of the superintendent of such work-house, for the care and maintenance of such prisoner. Ib.

## CHAPTER 29.

## AS TO BREACHES OF THE PEACE, INCLUDING RIOTS; OFFICERS' DUTIES, ETC., AS TO.

1. *Duties as peace officer.* As already stated, it is the constable's (and marshal's) duty to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and, generally, to keep the peace in his proper county; and to arrest, on view or warrant, and bring to justice, all felons and disturbers and violators of the criminal laws of this state,<sup>1</sup> and that in discharging their duties they may call to their aid the power of the county, or such assistance as may be necessary.<sup>2</sup>

2. *An officer may arrest, without warrant, for a breach of the peace* committed in his view, while still continuing, but not after it is over.<sup>3</sup> Such a breach is so committed, even though it be dark and some distance from the officer, if he can detect the act and could see the person committing it if it were light.<sup>4</sup>

3. When an officer arrests without warrant for a breach of the peace committed in his presence, he may lawfully arrest any third person who interferes forcibly to prevent such arrest.<sup>5</sup>

4. Upon reasonable suspicion, founded either on his own knowledge, or the information of others, that a felony has been committed, or such a breach of the peace as will probably prove to be a felony, he may arrest without a warrant.<sup>6</sup>

5. *As to entering houses, breaking doors, generally,* see Chapter 24.

6. A constable or police officer may enter a house the door of which is unfastened, in which there is a noise

<sup>1</sup> § 3340.

<sup>2</sup> § 3336. See pars. 36, 37, Chap. 3.

<sup>3</sup> *Mosely v. State*, 4 S. W. Rep. (Tex.), 907.

<sup>4</sup> *Pow v. Becker*, 3 Ind. 475; *Wahl v. Walton*, 30 Minn. 506; *Quinn v. Heisel*, 40 Mich. 576; *Taylor v. Strong*, 3 Wend. 384; *Meyer v. Clark*, 41 N. Y. Sup. Ct. 107; *State v. Sims*, 16 S. C. 486; *Krulevitz v. R. R.*, 9 N. E. Rep. (Mass.), 613; See *People v. Haley*, 48 Mich. 495; *Sternback v. Brooks*, 7 Daly, 142.

<sup>5</sup> *People v. Bartz*, 53 Mich. 493.

<sup>6</sup> *Murf. on Sheriffs*, § 1161, citing: *Shanley v. Wells*, 71 Ill. 78; *Taafé v. Slevin*, 11 Mo. App. 507; *Willis v. Warren*, 17 How. Pr. 100; *Eanes v. State*, 6 Humph. 53; *Commonwealth v. Presbry*, 14 Gray, 65.



amounting to a breach of the public peace, and to arrest any person disturbing the peace there in his presence.<sup>1</sup>

7. *What constitutes a breach of the peace.* A violation of public order, or disturbance of the public peace, disorderly drunkenness, any affray, assault, or riot,<sup>2</sup> the wanton discharge of a firearm in a public street,<sup>3</sup> disturbing a religious meeting,<sup>4</sup> attempting by force to prevent the servants of a municipal corporation from laying pipe in front of one's residence,<sup>5</sup> publicly exhibiting an obscene picture, and public indecent exposures of the person,<sup>6</sup> have each been defined and held to be such acts as justified the offender to be arrested without warrant for a breach of the peace.

8. *Certain statutory breaches of the peace.* Challenging another to fight at fisticuffs, or with cudgels, or provoking or attempting to provoke another to commit a breach of the peace; or carrying any pistol, bowie-knife, dirk, or other dangerous weapon, concealed on or about one's person; or willfully interrupting or disturbing any assembly of persons met for a lawful purpose, or any person while he is at or about the place where such assembly is to be held, or is or has been held; fighting a duel, challenging or accepting a challenge to fight a duel, or knowingly carrying such challenge; engaging as principal in any prize-fight, or aiding, assisting, or attending any prize-fight as backer, trainer, second, umpire, assistant, or reporter; agreeing to fight and willfully fighting or boxing at fisticuffs or engaging in any public sparring or boxing exhibition without gloves or with gloves of any kind, or aiding, assisting, or attending at any such boxing exhibition or glove fight, or permitting the same on or in any grounds, lots, buildings, hall, or structure of any kind owned or leased by such person permitting it, excepting exercises in a gymnasium or athletic club when written permission has been obtained therefor for the purpose from the sheriff of the county or mayor of the corporation where held; or engaging in any riot; or beginning, setting on foot, etc., any unauthorized military expedition or enterprise to be carried on from this state against the territory or people of any state of the United States, are classed by the statutes of Ohio as offenses against the public peace, and severe penalties are provided against the offenders.<sup>7</sup>

<sup>1</sup> Swan's Treatise, Ch. 73, § 2, citing 103 Mass. 426.

<sup>2</sup> Bouv. Law Dic.; Bryan v. Eates, 15 Ill. 87; State v. Bowen, 17 N. C. 58; State v. Freeman, 86 N. C. 683; Mosely v. State, 4 S. W. Rep. (Tex.), 907; State v. Lafferty, 5 How. 491.

<sup>3</sup> People v. Bartz, 53 Mich. 493.

<sup>4</sup> Vandever v. Mattocks, 3 Ind. 479; Hutchinson v. Sangster, 4 Greene (Ia.), 340.

<sup>5</sup> Crosland v. Shaw, 12 At. Rep. (Pa.) 849

<sup>6</sup> State v. Freeman, 86 N. C. 683.

<sup>7</sup> §§ 12394-12799-12814.

## FURTHER AS TO RIOTS.

9. *What constitutes a riot.* When three or more persons assemble together to do an unlawful act with force and violence, or, being assembled, do such an unlawful act, or agree with each other to do an unlawful act with force and violence, and make any preparation or movement therefor, or continue together after the officer makes proclamation as provided in paragraph 11 below, or attempts to make it and is prevented by rioters, they are guilty of riot.<sup>1</sup>

10. *Penalty.* The statute further declares that such rioters shall each be fined not more than five hundred dollars, or imprisoned not more than thirty days, or both, and shall give security for good behavior and to keep the peace for one year.<sup>2</sup>

11. *Warning rioters to disperse; calling aid.* Whenever three or more persons are unlawfully or riotously assembled, it is the duty of all judges, justices of the peace, sheriffs, and all other ministerial officers [including constables, marshals, policemen, etc.], immediately upon view, or as soon as may be on information, to make proclamation in the hearing of such persons, commanding them, in the name of the State of Ohio, to disperse and depart to their several homes or lawful employments; and if such persons do not then immediately so disperse and depart, it is the duty of said officers, respectively, to call upon all persons near, and, if necessary, throughout the county, to aid and assist in dispersing and taking into custody all persons so assembled. Every person so called, who refuses to render immediate assistance, is liable to be fined not more than fifty dollars.<sup>3</sup>

12. *If rioters injured or killed, the slayer held guiltless.* If any persons unlawfully or violently assembled are killed, or maimed, or otherwise injured in consequence of resisting the officers or others in dispersing and apprehending them in accordance with the provisions of the foregoing paragraph, such officers and others acting by their authority, or the authority of either of them, will be holden guiltless, if such killing, maiming, or injury takes place in consequence of the use of necessary and proper means to disperse or apprehend any such persons so assembled.<sup>4</sup>

13. When three or more persons unite or combine together, and commit any misdemeanor, while wearing white caps, masks, or any disguise, they shall be guilty of a riotous conspiracy, and, upon conviction thereof, are to be imprisoned in the penitentiary from two to ten years,

<sup>1</sup> § 12809. See also new law, 6278-6289, 92 v. 161-163, which also defines a "mob," "lynching," etc., and provides damages against county where these occur, but prescribes no new duties for constables, etc.

<sup>2</sup> § 12809. As to such security, etc., see Chap. 31. <sup>3</sup> § 12811. <sup>4</sup> § 12812.

and to be fined in any sum not exceeding two thousand dollars.<sup>1</sup>

<sup>1</sup> § 12810.

## CHAPTER 30.

SEARCH WARRANT, AND PROCEEDINGS THERE-  
UNDER.

1. *May be issued, when.* Justices of the peace, mayors, and police judges may issue warrants to search any house or place—(1) For property stolen, taken by robbers, embezzled, or obtained under any false pretense. (2) For forged or counterfeit coins, stamps, imprints, labels, trade-marks, bank bills, or other instruments of writing, and dies, plates, stamps, or brands for making the same. (3) For books, pamphlets, ballads, or printed papers, containing obscene language, prints, pictures, or descriptions manifestly tending to corrupt the morals of youth, and for obscene, lewd, or indecent or lascivious drawings, lithographs, engravings, pictures, daguerreotypes, photographs, stereoscopic pictures, models, or casts, and for instruments or articles of indecent or immoral use, or instruments, articles, or medicines for procuring abortion, or for the prevention of conception, or for self-pollution. (4) For any gaming table, establishment, device, or apparatus kept or exhibited for the purpose of unlawful gaming, or to win or gain money or other property, and for any money or property won by unlawful gaming.<sup>1</sup> See also par. 10, Chapter 34.

2. *Affidavit for search warrant.* An affidavit particularly describing the house or place to be searched, the person to be seized, and the things to be searched for, and alleging substantially the offense in relation thereto, and that affiant believes, and has good cause to believe, that such things are there concealed, must be filed with the magistrate before he can issue such warrant.<sup>2</sup>

3. *Search warrant must contain what.* The warrant for search must be directed to the proper officer, and must show, by a copy of the affidavit inserted therein, or annexed and referred to, or recite, all the material facts alleged in the affidavit, and particularly describe the thing to be searched for, the house or place to be searched, and the person to be seized; it must command the officer to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the magistrate, or some other magistrate or

<sup>1</sup> § 13482.<sup>2</sup> § 13483.



the county having cognizance of the offense. The command of the warrant must be that the search be made in the day-time, unless there is urgent necessity for a search in the night, in which case such search in the night may be ordered.<sup>1</sup>

4. For many important matters as to arrests, etc., see Chapter 22.

5. Provision is made by law for searching for dead bodies in suspected places, somewhat similar to the foregoing. See § 7128.

6. *Officer may break outer doors, etc.* In executing a search warrant, the officer may break open any outer or inner door or window of a dwelling-house or other building, if, after notice of his office and purpose, he be refused admittance; but this is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.<sup>2</sup> See further, as to breaking doors, Chapter 24.

7-12. *The following is the usual form of a search warrant:*

The State of Ohio, — county, ss.

To any constable of said county, greeting:

Whereas, there has been filed with me, the undersigned justice of the peace in and for said county, an affidavit duly made according to law by E. F., wherein it is alleged that on or about the — day of —, A. D. 19—, in the aforesaid county, the following mentioned and described goods and chattels, to wit [*here the articles to be searched for are mentioned*], the property of —, have been by some person or persons unlawfully taken, stolen, and carried away from the premises of —, of said county, and that said affiant believes, and has good cause to believe, that said goods and chattels, or some part thereof, are concealed in the — of —, in — township, of said county; [*here is said, if so: and further, that there is urgent necessity that said last mentioned premises be searched in the night-time, to prevent said goods and chattels from being concealed or removed so as not to be found*].

[*Here is also added, if the thief is known: It is therein further alleged that — did unlawfully steal, take, and carry away said goods and chattels as aforesaid.*]

[*Here is also added, when the facts require it: It is therein further alleged that on or about the said day, — did unlawfully and fraudulently receive and conceal said goods and chattels, or some part thereof, in said county, then and there well knowing the same to have been unlawfully stolen as aforesaid.*]

<sup>1</sup> § 13484.

If the goods mentioned in the search warrant can not be found, the party accused can not be arrested on the search warrant.

<sup>2</sup> § 13504.

These are, therefore, to command you, in the name of the State of Ohio, with the necessary and proper assistance, to enter in the day [or, night] time into the residence [or, store, etc., as may be] of the said —, of — township, in said county, and there diligently search for the above mentioned and described goods and chattels, and that you bring the same, or any part thereof, found on such search, and also the body [or, bodies] of the said [here may be named all who are accused of stealing or concealing the goods, etc., or any of them] forthwith before me, or some other magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law.

Given under my hand, this — day of —, A. D. 19—. C. D., Justice of the Peace.

13. As to service, return, etc., of this writ, see paragraphs 5-21 of Chapter 5.

14-16. Form of return to search warrant:

—, 18—, I searched for the goods and chattels described in the within warrant, at the time and place therein directed, and found the following, to wit: [mention the things found, for which search was directed in the warrant].

I also have the body [or, bodies] of the within mentioned [name the person or persons, if any, who were arrested in obedience to the warrant] now in court [or, now in custody].

A. B., Constable.

17-19. Other indorsements. At some suitable place on the back of the warrant, make also, at the proper time, the following indorsements (see paragraphs 6, 36, 37, Chapter 5):

Received this writ, —, 19—.

Constable's fees on this writ. Items:

Service and return.....	\$
Mileage, — miles.....	
Assistant.....	
Total .....	\$

20. Property seized to be kept by magistrate. When the warrant is executed by the seizure of the property or things described therein, the property or things must be safely kept by the magistrate to be used as evidence.<sup>1</sup>

<sup>1</sup> § 13486.

## CHAPTER 31.

PEACE WARRANT AND PROCEEDINGS THERE-  
UNDER.

1. *Complaint and warrant to keep the peace.* When complaint is made in writing, upon oath, before a justice of the peace, mayor, or police judge, that complainant has just cause to fear, and does fear, that another will commit any offense against the person or property of himself, or of his ward or child, the magistrate must issue a warrant, in the name of the state, to the sheriff or to any constable of the county, or, if issued by an officer of a municipal corporation, then to the marshal or other police officer of such corporation, commanding him forthwith to arrest the person complained of, and him to take before such magistrate, or any other magistrate of the same county, named in this paragraph, to answer such complaint.<sup>1</sup>

2-6. *A form of warrant to keep the peace.* A warrant substantially in the form following will be deemed sufficient:

The State of Ohio, — county, ss.

To any constable of said county, greeting:

Whereas, complaint has been made before me by one E. F., on oath, that he has just cause to fear, and does fear, that one G. H. will [*here is stated the threatened injury or violence according to the fact as sworn to*].

These are therefore to command you to apprehend the said G. H., and bring him forthwith before me, or some other magistrate having cognizance of the matter in said county to show cause why he should not find surety to keep the peace and be of good behavior toward the citizens of the state generally, and the said E. F. especially, and for his appearance before the proper court.

Given under my hand, this — day of —, —.

C. D., Justice of the Peace.<sup>2</sup>

7. *Further proceedings.* The proceedings after the issuing of such a warrant are the same, so far as the ministerial officer is concerned, as in Chapter 28 above. This latter officer must serve and return all subpoenas, commitments, etc., directed to him by the judicial officer in such cases.

8. *Before making the arrest* the officer should read Chapter 22 above.

<sup>1</sup> § 13463.

<sup>2</sup> § 13464.





## CHAPTER 32.

## CRIMES AND OFFENSES; WHAT ARE, AND WHO GUILTY OF.

1. As the law imposes certain duties and obligations, and confers certain rights, upon all ministerial officers concerning the arrest of persons guilty, or probably guilty, of any criminal offense, these duties, etc., being quite different in cases of misdemeanors and of felonies,<sup>1</sup> it is important for such officers to know *what* acts are such criminal offenses, and also *which* of them are *misdemeanors*, and which are *felonies*. To do this as fully in all details as is done by the statutes would occupy as much space as would fill a large volume, and can therefore not be so done here. But enough can probably be set forth to give a good idea of what acts constitute either a felony or a misdemeanor, and who is guilty thereof, though the criminal act can not be set forth in full, nor the extent of the punishment stated. From the references to the sections of the statutes given in the foot-notes, the officer can readily find the complete contents of the section referred to, in the copy of the General Code in the magistrate's office.

2. The foregoing is applicable also to contempts of court.

## SOME GENERAL PROVISIONS.

3. Whoever aids, abets, or procures another to commit any offense, is guilty of a felony or misdemeanor, as if he were the principal offender.<sup>2</sup>

4. Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors.<sup>3</sup>

## MISDEMEANORS.

5. Any person offending in any way set forth below is guilty of a misdemeanor.

6. Any railroad superintendent or other executive officer

<sup>1</sup> See pars. 30-39, of Chap. 22, and pars. 3, 4, of Chap. 28.

<sup>2</sup> § 12380.

<sup>3</sup> § 12372.

who refuses to obey orders of the state commissioner of railroads as to putting or keeping road in proper condition.<sup>1</sup>

7. Any officer, agent, or employe of railroad company who refuses to answer any questions of said commissioner.<sup>2</sup>

8. Any person in the employment of any insurance company, who violates insurance laws;<sup>3</sup> or who makes contracts or offers inducements to insurants, not expressed in policy.<sup>4</sup>

9. Every owner, lessee, or agent of a mine or quarry who fails to comply with the law relating to the same, or who makes false return concerning same.<sup>5</sup>

10. Any agent, owner, etc., of a mine, factory, elevator, etc., who refuses to furnish map, etc., of mine, statistics, etc.<sup>6</sup>

11. Whoever sells uninspected oils for illuminating purposes, or whoever falsely brands any package, cask, or barrel, or uses barrel, etc., having inspector's brand thereon, without the oil therein having been inspected.<sup>7</sup>

12. Whoever knowingly uses for illuminating purposes any uninspected oils;<sup>8</sup> or sells empty oil casks without defacing brand;<sup>9</sup> or adulterates any oil obtained from petroleum or from coal, in such manner as to render it dangerous for use, or offers such adulterated oil for sale.<sup>10</sup>

13. Any state inspector of oils, or his deputy, who, having knowledge of the violation of the laws concerning oils, fails to enter complaint as provided by law;<sup>11</sup> or who traffics in any article which he is appointed to inspect.<sup>12</sup>

14. Any probate judge or deputy clerk who practices law.<sup>13</sup>

15. Any sheriff, coroner, or constable who refuses to serve process of probate court.<sup>14</sup>

16. Any county commissioner who fails or neglects to make the report required of him by law.<sup>15</sup>

17. Any infirmary superintendent, director, etc., who certifies to fraudulent bills.<sup>16</sup>

18. County auditor who refuses or neglects to make settlements, or who willfully neglects any legal duty.<sup>17</sup>

<sup>1</sup> §§ 585, 586.      <sup>2</sup> § 609.      <sup>3</sup> §§ 672 (91 v. 331), 9378.

<sup>4</sup> § 12954 (90 v. 345).      <sup>5</sup> § 905.      <sup>6</sup> §§ 917, 920.      <sup>7</sup> § 12569.

<sup>8</sup> § 12573 (89 v. 279).      <sup>9</sup> § 13178.      <sup>10</sup> § 12572.

<sup>11</sup> § 12892 (89 v. 280).      <sup>12</sup> § 871.      <sup>13</sup> § 12854.      <sup>14</sup> §§ 1596, 1597.

<sup>15</sup> § 2509.      <sup>16</sup> § 2554.      <sup>17</sup> § 2579.

19. Any person who interferes with county surveyor, in the discharge of his office.<sup>1</sup>

20. Any constable, etc., who fails to execute any warrant directed to him by the coroner, and any coroner who refuses to perform any duty required of him by law.<sup>2</sup>

21. Any officer required to report concerning fees of county officers, who neglects to do so, or who violates any of the provisions in that behalf.<sup>3</sup>

22. Any assessor, who willfully omits to return any property for taxation, or any auditor who shall willfully omit any property from the tax duplicate, or any person who conspires to wrongfully increase the amount of any tax omission.<sup>4</sup>

23. Any sexton who permits dead body to remain unburied until it becomes offensive.<sup>5</sup>

24. Any township clerk refusing or neglecting to make out and put up detached statement of receipts and expenditures.<sup>6</sup>

25. Assessor who neglects to administer an oath to every person upon whom he calls to list property for taxation.<sup>7</sup>

26. Any clerk of municipal corporation who fails to post statement of receipts and expenditures at voting place.<sup>8</sup>

27. Any person having burglar's tools in his possession.<sup>9</sup>

28. Any person lawfully committed to work-house, who escapes or attempts to escape therefrom.<sup>10</sup>

29. Whoever violates an order of the board of health, or interferes with the execution of any such order, or illegally omits to obey such an order.<sup>11</sup>

30. Any engineer, conductor, etc., violating ordinance as to rate of speed of trains within corporate limits.<sup>12</sup>

31. Any owner or person having control of hall, opera house, etc., who permits the same to be used when it is not sufficiently protected against fire, or provided with water, easy exits, etc.<sup>13</sup> Same as to boarding schools.<sup>14</sup>

32. Any proprietor of any shop or factory who fails to comply, within thirty days, with notices served by inspectors to make necessary alterations or additions.<sup>15</sup>

<sup>1</sup> § 13401.      <sup>2</sup> § 2858.      <sup>3</sup> § 3036.      <sup>4</sup> § 5574.      <sup>5</sup> § 12684.

<sup>6</sup> § 3304.      <sup>7</sup> § 3355.      <sup>8</sup> § 4288.      <sup>9</sup> § 12439.      <sup>10</sup> § 12840.

<sup>11</sup> §§ 4424, 4470.

<sup>12</sup> § 3781.

<sup>13</sup> § 4652

<sup>14</sup> § 12575.

<sup>15</sup> § 4657, 4658.

33. Any person who violates rules for valuing personal property.<sup>5</sup>

34. Any bank officer who fails to furnish statement to county auditor, or who makes out a false statement.<sup>6</sup>

35. Any officer, agent, etc., of express, telegraph or telephone company who refuses to submit books or papers or to answer questions of proper authority.<sup>7</sup>

36. Any officers, etc., of railway company, who refuse to comply with requirements of board of assessors and appraisers of railway stock.<sup>8</sup>

37. Acting as agent for express or telegraph company in default for taxes.<sup>9</sup>

38. Any officer, judge, etc., who fails to preserve order at elections, or to perform other duties required of him.<sup>10</sup>

39. Any registrar of elections, or other registering officer, who permits false registration, or who refuses registration.<sup>11</sup>

40. Any judge or clerk, etc., at elections, who distributes ballots inside of polling room, or who there has in his possession any ticket except the one he intends to vote.<sup>12</sup>

41. Any neglect of duty by officers of election.<sup>13</sup> *See also 205d.*

42. Acting as registrar, judge, or clerk, without certificate of appointment, or acting as substitute judge without notice, or neglecting to forward notice, etc.<sup>14</sup>

43. Any physician who gives false certificate of disability as to militia service.<sup>15</sup>

44. The agent of any railroad company who knowingly diverts freight from the railroad line named by shipper.<sup>16</sup>

45. Any conductor who does not eject disorderly or gambling passenger, or who fails to arrest such passenger.<sup>17</sup>

46. Any person connected with a telegraph company, who divulges the contents of a private message, or who neglects or delays to deliver the same.<sup>18</sup>

47. Any person who evades toll on turnpike.<sup>19</sup>

48. Any person who obstructs travel on roads.<sup>20</sup>

49. Any electric road owner or operator not complying with law as to watchmen at railway crossings, etc.<sup>21</sup>

50. Any officer, trustee, etc., who insures, etc., any person, without that person's knowledge or consent, etc.<sup>22</sup>

51. Having corpse in possession without proper authority.<sup>23</sup>

52. Any taker of enumeration of school youth, who makes fraudulent returns.<sup>24</sup>

<sup>5</sup> § 12924.

<sup>6</sup> § 5413.

<sup>7</sup> § 12871 (90 v. 332; 91 v. 222, 240).

<sup>8</sup> § 12870.

<sup>9</sup> § 13415.

<sup>10</sup> § 13356.

<sup>11</sup> § 13286.

<sup>12</sup> § 13286.

<sup>13</sup> § 13286.

<sup>14</sup> § 13286.

<sup>15</sup> § 12927.

<sup>16</sup> § 13420.

<sup>17</sup> § 9459.

<sup>18</sup> § 13388.

<sup>19</sup> § 9238.

<sup>20</sup> § 6310.

<sup>21</sup> § 9123 (89 v. 346).

<sup>22</sup> § 13134.

<sup>23</sup> § 12691.

<sup>24</sup> § 12929.



53. Any person constructing a barbed wire partition fence without other owner's consent.<sup>4</sup>
54. Keeping a ferry without license.<sup>5</sup>
55. Not properly branding or marking flour barrel or sack.<sup>6</sup>
56. Using inferior oils in mines.<sup>7</sup>
57. Any soap or candle maker who puts in any box or package a less quantity than is marked or branded thereon.<sup>8</sup>
58. Any person taking fish and neglecting to bury offals.<sup>9</sup>
59. Any person who sells uninspected spirituous liquors.<sup>10</sup>
60. Fraudulently packing leaf tobacco.<sup>11</sup>
61. Any saloon-keeper, etc., who publishes notice, by person liable to injury by sale of liquor.<sup>12</sup>
62. Taking unlawful toll by miller.<sup>13</sup>
63. Wharf-boatman refusing to hail passing steamboat.<sup>14</sup>
64. Conducting drug-store, etc., not being a registered pharmacist.<sup>15</sup>
65. Violating §§ 6337-6346 as to pawnbrokers.<sup>16</sup>
66. Keepers of junk-shops and second-hand stores who neglect to put up sign, or to keep books as required by § 6370, or who deal with minors, etc., and outside of prescribed hours.<sup>17</sup>
67. Exposing for sale any commercial fertilizer without complying with the provisions of §§ 1139-1155, or permit fraudulent analysis to be attached to packages of.<sup>18</sup>
68. Hauling unlawful burdens, or using too narrow tire on improved public road.<sup>19</sup>
69. Whoever, being a jury commissioner, accepts a gift, compensation or favor, or the promise thereof, etc.<sup>20</sup>
70. Or being a person, firm or corporation, or an officer or agent thereof, makes or promises any gift, favor or compensation to a jury commissioner.<sup>21</sup>
71. Whoever attempts to corrupt a juror or influence him in the discharge of his duty.<sup>22</sup>
72. Whoever influences commissioner, etc., in selection of jurors.<sup>23</sup>
73. Executor, administrator, etc., not appearing in court when summoned for examination.<sup>24</sup>
74. Solemnizing marriage unlawfully, or by person not authorized.<sup>25</sup>
75. Administering medicine when intoxicated.<sup>26</sup>
76. Administering certain secret drugs and medicines, and not disclosing nature of, when asked.<sup>27</sup>

<sup>4</sup> § 12641.<sup>5</sup> § 13407.<sup>6</sup> § 5999 (88 v. 152).<sup>7</sup> § 974.<sup>8</sup> § 6039.<sup>9</sup> § 12782.<sup>10</sup> § 13214.<sup>11</sup> § 13147.<sup>12</sup> § 13215.<sup>13</sup> § 13110.<sup>14</sup> § 6321.<sup>15</sup> § 12905.<sup>16</sup> § 13400.<sup>17</sup> § 13398.<sup>18</sup> § 1153.<sup>19</sup> § 7459.<sup>20</sup> § 12829.<sup>21</sup> § 12830.<sup>22</sup> § 12826.<sup>23</sup> § 12829.<sup>24</sup> § 10675.<sup>25</sup> §§ 12921, 12922.<sup>26</sup> § 12410.<sup>27</sup> § 12411.

77. Pointing, etc., firearms, and injuring thereby.<sup>1</sup>

78. Unlawfully assaulting or threatening another in a menacing manner, or striking or wounding another.<sup>2</sup>

79. Enticing girl to escape from, or trespassing, etc., on grounds of Girls' Industrial Home.<sup>3</sup>

80. Whoever writes, prints, or publishes any false or malicious reports of or concerning another.<sup>4</sup>

81. Whoever knowingly sends or delivers any writing, for extorting money or other valuable thing, or containing willful or malicious threats of injury.<sup>5</sup>

82. Whoever maliciously or negligently sets fire to woods or prairies or grounds or maliciously permits fire to pass from his own ground to injure the property of another.<sup>6</sup>

83. Whoever maliciously, in the day-time, breaks and enters any building, car, etc., with intent to steal.<sup>7</sup>

84. Whoever breaks open a house, etc., in which any person dwells, and commits, or attempts to commit, personal violence.<sup>8</sup>

85. Whoever unlawfully enters the premises of another, to disturb bees, or carry away poultry, grain, or honey.<sup>9</sup>

86. Whoever sells or detains military property of the state, or money or other property belonging to militia.<sup>10</sup>

87. A mortgagor of personal property who removes the same out of the state, with intent to defraud.<sup>11</sup>

88. Whoever, with intent to defraud, converts to his own use or otherwise disposes of any personal property of any description held by him in trust; or who removes the same beyond the county, with intent to defraud.<sup>12</sup>

89. Altering ear-marks or brands of domestic animals.<sup>13</sup>

90. Whoever poisons another's domestic animal.<sup>14</sup>

91. Taking, using, etc., horse, mule, etc., without leave.<sup>15</sup>

92. Any person wrongfully taking bicycle, etc., with intent to use or to injure the same.<sup>16</sup>

93. Any person maliciously altering, defacing or removing number plate from bicycle, etc.<sup>17</sup>

94. Any person maliciously removing tire, or defacing, or destroying any part of bicycle, etc.<sup>18</sup>

95. Whoever knowingly sells diseased animals, allows them to run at large, or come in contract with other animals.<sup>19</sup>

96. Whoever keeps a house which is an habitual resort of thieves, or permits a house which he has let to be so kept.<sup>20</sup>

97. Whoever steals illuminating gas.<sup>21</sup>

98. Whoever knowingly and maliciously alters or re-

<sup>1</sup> § 12422.      <sup>2</sup> § 12423.      <sup>3</sup> §§ 12838, 12839.      <sup>4</sup> § 13383.      <sup>5</sup> § 13385.

<sup>6</sup> § 12436.      <sup>7</sup> § 12442 (88 v. 342).      <sup>8</sup> §§ 12443, 12444.      <sup>9</sup> § 12445.

<sup>10</sup> § 12882.      <sup>11</sup> § 12476.      <sup>12</sup> § 12475.      <sup>13</sup> § 13375.      <sup>14</sup> § 13362.

<sup>15</sup> § 13379.      <sup>16</sup> §§ 12514, 12515.      <sup>17</sup> § 12516.

<sup>18</sup> § 12516 (90 v. 329).      <sup>19</sup> § 13364.      <sup>20</sup> § 12453.

<sup>21</sup> § 12452.

moves landmarks between this state and the state of Pennsylvania.<sup>2</sup>

99. Whoever displaces or removes any township corner posts.<sup>3</sup>

100. Whoever willfully injures, defaces, or removes United States coast survey property.<sup>4</sup>

101. Whoever wantonly or maliciously throws or lays down fences or opens gates, the property of another.<sup>5</sup>

102. Whoever willfully injures or destroys any turnpike gate or toll board.<sup>6</sup>

103. Whoever rides or drives faster than a walk over a bridge, having on it a caution notice, or whoever drives over such bridge more than twenty head of cattle at one time, or whoever refuses or fails to pay the usual toll for crossing such bridge.<sup>7</sup> See paragraph 11, chapter 40.

103a. Whoever refuses to give notice of accidents to the chief inspector of mines and to the coroner.<sup>8</sup>

104. Any coroner who refuses to hold an inquest, in case of any accident.<sup>9</sup>

105. Whoever draws or drives a vehicle on [along] a railroad track or its graded way, without the consent of the owner or controller of the railroad.<sup>10</sup>

106. Whoever wantonly or maliciously injures any watercraft.<sup>11</sup>

107. Whoever willfully injures or destroys certain aids to navigation, or whoever moors any vessel to any such buoy, beacon, etc.<sup>12</sup>

108. Whoever maliciously injures or defaces any building, or commits any trespass upon the inclosed grounds attached thereto, or any fixtures, or any inclosure or sidewalk about the same.<sup>13</sup>

109. Destroying or defacing newspapers, etc., belonging to libraries.<sup>14</sup>

110. Demolishing guideboards, etc., on public road.<sup>15</sup>

111. Whoever, without lawful authority, destroys trees or crops.<sup>16</sup>

112. Buying timber unlawfully cut.<sup>17</sup>

113. Manufacturing, or permitting to be manufactured, unlawfully cut timber.<sup>18</sup>

114. Whoever trespasses upon the lands of another, on the surface, or while mining.<sup>19</sup>

115. Defacing or destroying advertisements or notifications, set up by authority of law, or by bridge owners.<sup>20</sup>

116. Posting bills, etc., on buildings, etc., without consent of the owner, is a misdemeanor; but this paragraph does not apply to the posting of any notice required by any law to be posted.<sup>21</sup>

<sup>2</sup> § 12480.

<sup>3</sup> § 12481.

<sup>4</sup> § 12482.

<sup>5</sup> § 12483.

<sup>6</sup> § 12484 (87 v. 329).

<sup>7</sup> § 12485.

<sup>8</sup> § 940.

<sup>9</sup> § 976.

<sup>10</sup> § 12542.

<sup>11</sup> § 12486.

<sup>12</sup> § 12637.

<sup>13</sup> § 12487.

<sup>14</sup> § 12488.

<sup>15</sup> § 12489.

<sup>16</sup> § 12490.

<sup>17</sup> § 12456.

<sup>18</sup> § 12457.

<sup>19</sup> §§ 12522 (91 v. 224), 12527..

<sup>20</sup> § 12491.

<sup>21</sup> § 12492.

117. Setting up obstruction on public sidewalk, or in any way obstructing the same.<sup>5</sup>

118. Whoever interferes with, destroys, or injures any pound, or sets at liberty any animal impounded.<sup>6</sup>

119. Aiding or attending a prize fight.<sup>7</sup>

120. Public boxing exhibitions are unlawful; whoever takes part in such exhibition, or aids, assists, or attends same, is guilty of a misdemeanor, but nothing in this paragraph shall apply to the exercises of any athletic club, permitted by the sheriff or the mayor.<sup>8</sup>

121. Challenging to fight, or provoking breach of the peace.<sup>9</sup>

122. Whoever carries any pistol, bowie-knife, dirk, or other dangerous weapon, concealed on or about his person.<sup>10</sup>

123. As to riots and rioting and persons injured thereat by officers, see Chapter 29.

124. Whoever falsely personates another, before any officer authorized to take acknowledgments of deeds, etc., with intent to defraud.<sup>11</sup>

125. Acting in a disorderly manner on a passenger train.<sup>11\*</sup>

126. Whoever attempts to bribe or to influence with regard to his duty, any juror, witness, etc., or any juror, witness, etc., who accepts bribe to influence him in the discharge of his duty.<sup>12</sup>

127. Whoever, either directly or indirectly, demands or receives any money or other thing of value for compounding or abandoning any prosecution for any crime or misdemeanor.<sup>13</sup>

128. Conveying into prison things with intent to aid an escape, or conveying letters, etc., into or from a prison contrary to rules.<sup>14</sup>

129. Whoever, having lawfully the custody of a person charged with or convicted of an offense, voluntarily suffers such prisoner to escape, and whoever rescues such prisoner by force from the custody of such person, or from a jail or any place of confinement.<sup>15</sup>

130. Whoever conveys intoxicating liquors or drugs into a prison, except under the rules of the institution and upon written prescription of a regularly appointed physician thereof.<sup>16</sup>

131. Whoever aids or assists any person lawfully confined in a jail to escape.<sup>17</sup>

132. Whoever attempts to prevail on an officer to permit an escape.<sup>18</sup>

133. Whoever entices, etc., an inmate of a state penal or reformatory institution to escape, etc.<sup>19</sup>

<sup>5</sup> § 12639 (89 v. 234).

<sup>6</sup> § 12493.

<sup>7</sup> § 12801.

<sup>8</sup> § 12802.

<sup>9</sup> § 12804.

<sup>10</sup> § 12819.

<sup>11</sup> § 12859.

<sup>11\*</sup> § 12815 (89 v. 51).

<sup>12</sup> § 12825.

<sup>13</sup> § 12861.

<sup>14</sup> § 12835.

<sup>15</sup> § 12832.

<sup>16</sup> § 12836.

See also No. 173.

<sup>17</sup> § 12833.

<sup>18</sup> § 12834.

<sup>19</sup> § 12838.



134. If witness refuses to appear, or to be sworn, or to answer, he is guilty of a misdemeanor; but this paragraph shall not prevent proceedings for contempt, nor require witness to be sworn before his fees are paid.<sup>6</sup> See paragraph 8, Chapter 7.

135. Whoever refuses to testify before the general assembly or a committee of either house, etc.<sup>7</sup>

136. Endeavoring to intimidate witness, juror, or officer, or to obstruct the due administration of justice.<sup>8</sup>

137. Whoever attempts to corrupt a witness or influence him with respect to his testimony.<sup>9</sup>

138. Whoever resists or abuses judicial or ministerial officers in the execution of their office.<sup>10</sup>

139. Any officer under the laws of this state who knowingly asks, demands, or receives any fee or reward other than that allowed by law, to execute or do his official duty.<sup>11</sup>

140. Whoever, under color of office, injures, defrauds, or oppresses, or attempts to injure, defraud, or oppress any person.<sup>12</sup>

141. Whoever, being a judge or other officer of court, excites or stirs up law-suits or quarrels with intent to injure any person.<sup>13</sup>

142. A judge of common pleas who acts as attorney, counsel, etc., before a justice of the peace.<sup>14</sup>

143. Whoever takes upon himself to exercise or officiate in any office or place of authority in this state without being lawfully authorized, and whoever, by color of his office, willfully and corruptly oppresses any person, under pretense of acting in his official capacity.<sup>15</sup>

144. Whoever impersonates an officer and falsely represents himself to be such, etc.<sup>16</sup>

145. Any notary public acting as such after his term of office has expired.<sup>17</sup>

146. Whoever, being a county commissioner, is guilty of misconduct in office.<sup>18</sup>

147. Any jailer who suffers his jail to become unclean, or who deals with prisoners less strictly than sentence warrants.<sup>19</sup>

148. Any ministerial officer willfully neglecting or refusing to perform his duty in criminal cases, or delaying to execute legal process.<sup>20</sup>

<sup>6</sup> § 12843.      <sup>7</sup> § 12845.      <sup>8</sup> § 12866.      <sup>9</sup> § 12837.      <sup>10</sup> § 12858.  
 Personal violence to officer's person not necessary to the offense.  
 Smith, *in re.*, 14 N. P. (N.S.) 497.  
<sup>11</sup> § 12916.      <sup>12</sup> § 12915.      <sup>13</sup> § 12847.      <sup>14</sup> § 12848.      <sup>15</sup> § 12925.  
<sup>16</sup> § 12860.      <sup>17</sup> § 12926.      <sup>18</sup> § 12920.      <sup>19</sup> § 12849.      <sup>20</sup> § 12850.

149. Whoever refuses to aid officers in arresting, securing, etc., a criminal and in preserving the peace.<sup>1</sup>

150. Any juror serving in any case before a justice of the peace who knowingly receives excessive fees.<sup>2</sup>

151. Corporations may be prosecuted for violating §§ 12646, 12652, 12649, 12655, 12653, relating to nuisances.<sup>3</sup>

152. Whoever maintains any nuisance of any kind, or whoever unlawfully diverts any water-course from its natural course, etc.<sup>4</sup>

153. Creating artificial ponds and stagnant waters.<sup>5</sup>

154. Whoever deposits dead animals, offal, etc., into or upon land or water, etc.;<sup>6</sup> or fails to burn or deeply bury animal dying of contagious disease.<sup>7</sup>

155. Whoever carries on the business of slaughtering, tallow-chandlery, etc., within one mile of Longview, or any other state benevolent institution.<sup>8</sup>

156. Whoever permits emptying of coal-dirt, petroleum, etc., into rivers.<sup>9</sup>

157. Whoever willfully obstructs any ditch, drain, or water-course, or diverts the water therefrom.<sup>10</sup>

158. Whoever maliciously befouls well, spring, etc.<sup>11</sup>

159. Whoever sells unwholesome provisions,<sup>12</sup> or feeds same to any animal used for human food.<sup>13</sup>

160. Whoever writes, prints, or publishes in any way an account of any lottery or scheme of chance of any kind or description, or in any way gives publicity to such lottery or scheme of chance.<sup>14</sup>

161. Whoever vends, sells, barter, or in any way disposes of any ticket of any kind, representing any interest, in any lottery, "policy," or scheme of chance of any kind or description, whether located within or without this state.<sup>15</sup>

162. Whoever, publicly or privately, as owner or agent, establishes, opens, sets on foot, carries on, promotes, makes, draws or acts as "backer," or "vendor," for, or on account of, or is any way concerned in, any lottery, "policy," or scheme of chance of any kind or description, whether carried on within or without this state.<sup>16</sup>

163. Whoever keeps a room, building, arbor, booth, shed, or tenement, or canal-boat or other water-craft, to be used or occupied for gambling, or knowingly permits the same to be so used or occupied, and whoever, being the owner of any room, building, arbor, booth, shed, or tenement, or canal-boat or other water-craft, rents the same to be so used or occupied.<sup>17</sup>

<sup>1</sup> § 12857. Smith, *in re.*, 14 N. P. (N.S.) 497.

<sup>2</sup> § 12828.

<sup>3</sup> §§ 12657-8-9.

<sup>4</sup> § 12646.

<sup>5</sup> § 12652.

<sup>6</sup> § 12649.

<sup>7</sup> § 12780 (88 v. 188).

<sup>8</sup> § 12655.

<sup>9</sup> § 12647 (72 v. 287).

<sup>10</sup> § 12653.

<sup>11</sup> § 12654.

<sup>12</sup> § 12760-1.

<sup>13</sup> § 12779.

<sup>14</sup> § 13067.

<sup>15</sup> § 13063.

<sup>16</sup> § 13064.

<sup>17</sup> § 13054.

164. Whoever suffers any gaming upon device for gain in his house, etc.<sup>1</sup>

165. Whoever keeps or exhibits for gain, or to win or gain money or other property, any gambling table, or faro or keno bank, or any gambling device or machine of any kind or description, under any denomination or name whatsoever or keeps or exhibits any billiard table for the purpose of betting or gambling, or allows the same to be used for any such purpose.<sup>2</sup>

166. Whoever contracts for options on grain, concerning the market, etc., or spreads false rumors to influence the price of commodities.<sup>3</sup>

167. Any tavern-keeper or keeper of a house of public resort who suffers any game whatever for a wager to be played thereat.<sup>4</sup>

168. Whoever plays any game for a wager in any public place.<sup>5</sup>

169. Whoever induces a minor to play for money, or whoever makes a wager or bet with a minor on the result of a game of chance.<sup>6</sup>

170. Whoever plays at any game for money, or makes any bet for money or property of value.<sup>7</sup>

171. Whoever bets on any election, or sells or purchases pools on the result of any election held under the laws of this state.<sup>8</sup>

172. Whoever sells pools, or permits pools to be sold in any building, or registers wagers, or permits them to be registered, upon the result of any trial or contest of skill of man or beast.<sup>9</sup>

173. Whoever keeps, or causes to be kept, any bucket-shop, or whoever carries on the pretended buying or selling of stocks, bonds, petroleum, etc., or whoever employs the telegraph to transmit information concerning such transactions.<sup>10</sup>

174. Any person who shall communicate, receive, or display in any manner any pretended offer to buy or sell, with a view to any transaction.<sup>11</sup>

175. Whoever knowingly permits any of the illegal acts mentioned above to be done in his building, etc.<sup>12</sup>

176. Being found in a state of intoxication.<sup>13</sup>

177. Keeping a place where intoxicating liquors are sold in violation of law.<sup>14</sup>

178. Buying intoxicating liquors for intoxicated persons.<sup>15</sup>

<sup>1</sup> § 13056.    <sup>2</sup> §§ 13065, 13066.    <sup>3</sup> § 13069.    <sup>4</sup> § 13057.    <sup>5</sup> § 13058.  
<sup>6</sup> § 12964.    <sup>7</sup> § 13059.    <sup>8</sup> § 13060.    <sup>9</sup> § 13062.    <sup>10</sup> § 13071.  
<sup>11</sup> § 13076.    <sup>12</sup> § 13081.    <sup>13</sup> § 13194.    <sup>14</sup> § 13195 (92 v. 55).    <sup>15</sup> § 13198.

179. Selling, etc., intoxicating liquors near religious society meeting, etc.<sup>1</sup>

180. Selling intoxicating liquors or keeping a house of ill-fame near the Columbus asylum for the insane, etc.<sup>2</sup>

181. Selling intoxicating liquors near any Soldier's and Sailor's Home, etc.<sup>3</sup>

182. Furnishing liquor to prisoners.<sup>4</sup> See also No. 130.

183. Whoever sells, or gives away, any spirituous, vinous or malt liquors on any election day, or, being the keeper of a place where any such liquors are habitually sold and drank, fails on any election day to keep the same closed.<sup>5</sup>

184. Adulterating liquors, except for medicinal or mechanical purposes.<sup>6</sup>

185. Whoever overdrives, overloads, tortures, torments, deprives of necessary sustenance, or unnecessarily or cruelly beats or needlessly mutilates or kills any animal, or impounds or confines any animal in any place and fails to supply the same during such confinement with a sufficient quantity of good, wholesome food and water, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhuman manner, or who keeps cows or other animals in any inclosure without wholesome exercise and change of air, or feeds cows on food that produces impure and unwholesome milk, or abandons to die any maimed, sick, infirm, or diseased animal.<sup>7</sup>

186. Whoever engages in or is employed at cock-fighting, dog-fighting, bear-baiting, pitting one animal against another of the same or of a different kind, or any similar cruelty to animals, or receives money for the admission of any person to any place kept for any such purpose, or uses, trains, or possesses a dog or other animal for the purpose of seizing, detaining, or maltreating any domestic animal.<sup>8</sup>

187. Selling or using adulterated coal oil, or coal oil that will flash at a less temperature than one hundred and twenty degrees Fahrenheit.<sup>9</sup>

188. Using untested petroleum oil.<sup>10</sup>

189. Selling empty oil vessels with stamp on.<sup>11</sup>

190. Selling or giving away poisons without being properly marked.<sup>12</sup>

<sup>1</sup> § 13208.

<sup>2</sup> § 13206.

<sup>3</sup> §§ 13203, 13202 (90 v. 143).

<sup>4</sup> § 12846.

<sup>5</sup> § 13197.

<sup>6</sup> § 13213.

<sup>7</sup> § 13376 (89 v. 140).

<sup>8</sup> §§ 13378, 13478.

<sup>9</sup> § 12571.

<sup>10</sup> § 12573.

<sup>11</sup> § 13178.

<sup>12</sup> § 12667.



191. Depositing poison in thoroughfares.<sup>1</sup>

192. Discharging firearms on lawns, etc., or within gunshot of any occupied house.<sup>2</sup>

193. Any county auditor who fails to make report to state auditor.<sup>3</sup>

194. Any county auditor who fails to make settlement with the treasurer, or who willfully fails to perform any duty required of him by law.<sup>4</sup>

195. Any county recorder who records plats before approval.<sup>5</sup>

196. Any person who offers bribe for recommending textbooks, etc., or any member of a board of education who votes for certain relatives prescribed by law for teacher.<sup>6</sup>

197. Any municipal officer who is interested in corporation contracts, or acts as superintendent of corporation work.<sup>7</sup>

198. Any justice of the peace who fails to make and set up lists of unclaimed moneys in his hands.<sup>8</sup>

199. Any justice of the peace who refuses to deliver up docket, etc., on demand by the person entitled thereto.<sup>9</sup>

200. Riding or driving horse or any other domestic animal into or through inclosures of railroads, or suffering any fence to remain down or open longer than is necessary.<sup>10</sup>

201. Climbing upon railroad cars, unless in compliance with law.<sup>11</sup>

202. Smoking, using profane language, quarreling, taking dog on car without permission, or failing to pay the proper fare.<sup>12</sup>

203. Whoever takes, receives, hires, employs, uses, exhibits, or in any manner, or under any pretense sells, apprentices, gives away, lets out, or otherwise disposes of, to any person, any child under the age of fourteen years, for or in the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire-walking, dancing, begging or peddling, or as a gymnast, contortionist, rider, or aerobat, or for or in any obscene, indecent, or immoral purpose, exhibition, or practice, or for in any business exhibition, or vocation injurious to the health or dangerous to the life and limbs of such child, or causes or procures or encourages any such child to engage therein, or causes or permits an such child to suffer, or inflicts upon it unjustifiable physical pain or mental suffering, or willfully causes or permits the life of any such child to be endangered, or its health to be injured, or such child

<sup>1</sup> § 12663.

<sup>2</sup> §§ 12817.

<sup>3</sup> § 12888.

<sup>4</sup> § 12887.

<sup>5</sup> § 12928.

<sup>6</sup> § 12931.

<sup>7</sup> § 12912 (94 v. 406).

<sup>8</sup> § 12852.

<sup>9</sup> § 12853.

<sup>10</sup> § 12544.

<sup>11</sup> § 12543.

<sup>12</sup> § 12816.

to be placed in such situation that its life may be endangered or its health injured, or has in custody any such child for any of the purposes aforesaid.<sup>13</sup>

204. Whoever tortures, torments, or willfully deprives of necessary food or shelter, any person; or whoever cruelly uses or deprives of necessary food or shelter, any child, or children.<sup>14</sup>

205. Whoever sells, barter, or gives to any minor, under fourteen years, any firearm of any description whatever; or whoever permits any firearm of which he has charge or control to be used by such minor.<sup>15</sup>

206. Whoever sells toy pistols to minors under fourteen years of age.<sup>16</sup>

207. Whoever entices or persuades a married man or woman to renounce the marriage covenant, to join any sect having such principles of renunciation.<sup>17</sup>

208. Whoever administers an anæsthetic without the presence of a witness.<sup>18</sup>

209. Whoever practices dentistry without a diploma, or a certificate of qualification.<sup>19</sup>

210. Whoever takes, sells, etc., any negotiable instrument, intended as a note for patent right, without the words, "Given for a patent right," on it.<sup>20</sup>

211. A male person, physically able to perform manual labor, who has not made reasonable effort to procure employment, or who has refused to labor at reasonable prices, who is found in a state of vagrancy, or practicing common begging.<sup>21</sup>

212. Whoever connects any bridge to the Ohio shore of the Ohio river, with an unbroken span of less than four hundred feet over the main channel.<sup>22</sup>

213. Any tavern-keeper who permits rioting, drunkenness, etc., in his house.<sup>23</sup>

214. Whoever, being the owner or keeper of a billiard saloon or a billiard table, permits a minor under the age of eighteen years to play in such saloon or upon such table.<sup>24</sup>

215. Whoever sells cigarettes, etc., to minors under eighteen years of age.<sup>25</sup> See par. 365.

216. Any person engaged in the business of pawnbroker, who fails to take out a license, or receives and advances money upon any property pledged, and fails to keep a register thereof, or of any property bought, as required by law, or who refuses to exhibit such register, or any prop-

<sup>13</sup> § 12968.

<sup>14</sup> § 12428.

<sup>15</sup> § 12967.

<sup>16</sup> § 12966.

<sup>17</sup> § 13042.

<sup>18</sup> § 12678.

<sup>19</sup> § 12713.

<sup>20</sup> § 13149.

<sup>21</sup> § 13409.

<sup>22</sup> § 13406.

<sup>23</sup> § 12813.

<sup>24</sup> § 12962.

<sup>25</sup> § 12965.

erty pledged, or property bought, if in his possession, to the chief of police or to a police officer lawfully deputed to inspect the same.<sup>26</sup>

217. Whoever, being the keeper of a public house, keeps or permits to be kept, any ball or nine-pin alley, or is interested in any ball or nine-pin alley upon the premises of another.<sup>27</sup>

218. Whoever suffers any Canada thistles to grow on his land.<sup>28</sup>

219. Whoever, except common carriers, imports into the state any cattle infected with Spanish fever, or liable to impart such disease to other cattle.<sup>29</sup>

220. Whoever, except in case of invasion by a foreign enemy, or to suppress insurrection, or for the purpose of raising the body of a person drowned, or for blasting or removing rock, fires any cannon, or explodes any gunpowder on a public street.<sup>30</sup>

221. Exhibiting puppet-shows, etc., for money.<sup>31</sup>

222. Exhibition of any curiosity, or sets up swing, etc., at fairs, without written permission of board of directors.<sup>32</sup>

223. Whoever plays bullets, or runs horses, or shoots within the limits of any municipal corporation.<sup>33</sup>

224. Whoever, being the owner or operator of any mill near a public highway, fails to build a covert to his water wheel.<sup>34</sup>

225. Whoever, owning or controlling any hall, theater, school-house, etc., permits the same to be used for the purpose of public assemblies or schools, without the certificate required by law, that the same is provided with speedy and safe ingress and egress, or whoever, being owner, lessee, or proprietor of such building, obstructs the aisles or hallways thereof.<sup>35</sup>

226. Whoever advertises, prints, publishes, etc., or causes to be advertised, printed, published, etc., any circular or pamphlet, etc., with intent to procure, or to aid in procuring, any divorce, either in this state or elsewhere.<sup>36</sup>

227. Whoever, being a duly licensed and appointed auctioneer, neglects or refuses to exhibit any quarterly account, or neglects or refuses to make payment of the proper duties to the treasurer, within the time prescribed by law.<sup>37</sup>

228. Whoever, being a duly appointed and licensed auctioneer, farms out his office to another, or derives profit or

<sup>26</sup> § 13400.

<sup>27</sup> § 13396.

<sup>28</sup> § 7152.

<sup>29</sup> § 13374.

<sup>30</sup> § 12636.

<sup>31</sup> § 13395.

<sup>32</sup> § 13394 (89 v. 135).

<sup>33</sup> § 12635.

<sup>34</sup> § 12601.

<sup>35</sup> § 12574.

<sup>36</sup> § 13412.

<sup>37</sup> §§ 13404, 5877.

advantage from the sales made by another, except his clerk.<sup>38</sup>

229. Whoever sends or assigns claims to be collected by attachment in courts outside the state.<sup>39</sup>

230. Whoever compels, or seeks to compel any employe to purchase goods or supplies of any particular person, firm, or corporation, or whoever sells goods or supplies of any kind, or pays the wages of labor in goods or supplies, at higher prices than the reasonable or current market value in cash.<sup>40</sup>

231. Trespassing by employes of telegraph and telephone companies.<sup>41</sup>

232. Keeping a place for the sale and use of opium, or resorting to any such place for the purpose of smoking opium.<sup>42</sup>

233. Unlawfully wearing the Grand Army, or other military badge.<sup>43</sup>

234. Unlawfully wearing the insignia of civic or religious societies.<sup>44</sup>

235. Unlawful obtaining of registry or transfer in any herd book, or knowingly giving a false pedigree of any jersey animal.<sup>45</sup>

236. Whoever cohabits with another in a state of adultery or fornication.<sup>46</sup>

237. Keeping or letting houses of ill-fame, assignation, etc.<sup>47</sup>

238. Whoever, being over fourteen years of age, willfully makes any indecent exposure of his person in any public place, or in any place where there are other persons to be offended or annoyed thereby, or utters or uses any obscene or licentious language or words in the presence or hearing of any female.<sup>48</sup>

239. Sending obscene literature, etc., by mail, making or giving information where to obtain the same, etc.<sup>49</sup>

240. Advertising secret drugs, medicines, etc., for the use of females.<sup>50</sup>

241. Selling or giving away secret drugs for preventing conception or procuring abortion.<sup>51</sup>

242. Profane swearing.<sup>52</sup>

243. Sporting, hunting, fishing, shooting, etc., on Sunday.<sup>53</sup>

244. Exhibiting theatrical or dramatic performance, etc., playing base ball, or ten-pins, or similar games; keeping a

<sup>38</sup> §§ 13405, 5874.

<sup>39</sup> 12862 (91 v. 361).

<sup>40</sup> 12944 (88 v. 443).

<sup>41</sup> §§ 12530.

<sup>42</sup> § 12679.

<sup>43</sup> § 16363.

<sup>44</sup> § 13164.

<sup>45</sup> § 13162.

<sup>40</sup> § 13024.

<sup>47</sup> 13031 (92 v. 398).

<sup>48</sup> § 13032 (89 v. 127).

<sup>49</sup> §§ 13035 (91 v. 330), 13036.

<sup>50</sup> 13034.

<sup>51</sup> 13033.

<sup>52</sup> 13390.

<sup>53</sup> § 13048.



disorderly house of resort, selling or giving away spirituous liquors in building adjacent to such performance, or game, on Sunday.<sup>54</sup>

245. Engaging in common labor on Sunday.<sup>55</sup>

246. Whoever assists in any experiment upon body unlawfully taken from its place of sepulture.<sup>56</sup>

247. Whoever receives, at medical college, human body bearing marks of violence.<sup>57</sup>

248. Whoever, being lawfully possessed of any corpse held for dissection, unlawfully uses the same for any purpose.<sup>58</sup>

249. Whoever, without lawful authority, injures grave-stones, monuments, or cemetery grounds.<sup>59</sup>

250. Shooting on or near cemeteries.<sup>60</sup>

251. Racing near Spring Grove cemetery.<sup>61</sup>

252. The publication, exhibition, etc., of immoral or indecent pictures.<sup>62</sup>

253. Any person giving or participating in any indecent or immoral exhibition of any part of the human form.<sup>63</sup>

254. Attempting to intimidate electors or judges at primary elections.<sup>64</sup>

255. Any candidate at election who pays or promises to pay bribes for influence or votes.<sup>65</sup>

256. A supervisor or judge who willfully omits his duty at elections, or a person who votes fraudulently.<sup>66</sup>

257. Bribing, corrupting, or intimidating electors.<sup>67</sup>

258. Whoever votes, not being a resident of the precinct twenty days.<sup>68</sup>

259. Whoever votes, without having had a residence in the state of one year, or without being twenty-one years of age, or without being a citizen of the United States, or being disqualified by a conviction of crime and not pardoned.<sup>69</sup>

260. Whoever counsels or advises another to give an illegal vote.<sup>70</sup>

261. Any judge who postpones counting votes, or who adjourns from place of voting, or who removes ballot-box.<sup>71</sup>

262. Any judge who knowingly sanctions or receives an illegal vote, or receives the vote from any person who refuses to answer certain questions, or who refuses to take the oath prescribed by law, or sanctions the refusal of any other judge to administer oaths, or sanctions the refusal of a legal vote, or refuses to admit the candidates to be

54 § 13049.

55 § 13044.

56 § 13391.

57 § 12869.

58 § 12693.

59 § 12499 (92 v. 199).

60 § 12818.

61 § 12822.

62 § 13039.

63 § 13040.

64 § 13336.

65 § 13316.

66 § 13325.

67 § 13319.

68 § 13254.

69 § 13251.

70 § 13259.

71 § 13285.

present at such an election, or any judge or clerk who willfully neglects any duty relating to elections, or who is guilty of corrupt conduct.<sup>72</sup>

263. Marking ballots, or printing, distributing, or voting ballots unlawfully written or printed.<sup>73</sup>

264. Whoever knowingly sells, or permits any one in his employ to sell property and makes or gives false weight or measure.<sup>74</sup>

265. Whoever takes illegal toll at mill.<sup>75</sup>

266. Whoever sells articles having forged brands, stamps, or labels affixed.<sup>76</sup>

267. Selling stone coal otherwise than by the prescribed weights or measures.<sup>77</sup>

268. Making or using false gas meters with intent to defraud.<sup>78</sup>

269. Whoever fails to mark weights on packages sold by weight or whoever fraudulently transfers brands, or whoever fraudulently repacks branded packages.<sup>79</sup>

270. Using barrel, cask, or other vessel with private brand affixed, for the purpose of deceiving.<sup>80</sup>

271. Any person obtaining food or lodging from an inn-keeper, with intent to defraud.<sup>81</sup>

272. Any partner who is guilty of fraud in the affairs of partnership.<sup>82</sup>

273. Any medical examiner for an insurance company who knowingly makes false statements to the company.<sup>83</sup>

274. Making fraudulent transfers to defeat creditors.<sup>84</sup>

275. Adulterating or selling adulterated domestic wines.<sup>85</sup>

276. Adulterating or selling adulterated liquors.<sup>86</sup>

277. Any person selling wool washed on sheep's back or otherwise, containing unwashed tag-locks, or unwashed wool of any kind, or black wool, or parts of buck's fleeces, or any substance foreign to the fleece, that is calculated to defraud.<sup>87</sup>

278. Forging or altering railroad and toll-bridge tickets, checks, etc., or having in possession or uttering same.<sup>88</sup>

279. Whoever restores canceled checks, etc., or has the same in possession, or offers them for sale, or sells, or offers for sale, any tickets, etc., which should have been canceled; or whoever, being a conductor, purposely fails to cancel tickets, etc.<sup>89</sup>

280. Maliciously altering, defacing, destroying any public record or document.<sup>90</sup>

72 § 12289.  
73 § 13265.  
74 § 13106.  
75 § 13110.  
76 § 13111.  
77 § 13107.  
78 § 13127.  
79 § 13128.  
80 § 12773.  
81 § 13131.

82 § 13142.  
83 § 13132.  
84 § 13126.  
85 § 12772.  
86 § 12676.  
87 § 13114.  
88 § 13086.  
89 § 13087.  
90 § 13088.

281. Forging brand, stamp, label, or trade-mark, on any manufacture, compound, etc.<sup>91</sup>

282. Having in possession, or using fraudulently, any imitation, die, stamp, brand, etc.; or using fraudulently any genuine die, stamp, brand, etc.<sup>92</sup>

283. Any person injuring, etc., gas-works, etc., at penitentiary.<sup>93</sup>

284. Having in possession dangerously diseased animals, or neglecting to suppress said diseases, etc.<sup>94</sup> See paragraph 45, Chapter 3.

285. Any person who shall deprive any person of his civil rights.<sup>95</sup>

286. Any vendor of property conditionally sold who retakes possession of property without repaying certain part of price paid.<sup>96</sup>

287. Any officer in public institution who creates a money deficiency in such institution.<sup>97</sup>

288. Not providing seats for female employes, as required by law.<sup>98</sup>

289. Any manufacturer who fails to report accidents to chief inspector of workshops.<sup>99</sup>

290. Trespassing upon lands bordering on fish-pond, for purpose of catching fish, or buying or receiving fish so caught, or poisoning fish, or letting water out of pond, or tearing down or defacing sign-board along such pond.<sup>1</sup>

291. Any manufacturer who refuses to furnish sample of food for analysis; or any person who manufactures or offers for sale any adulterated food or drug.<sup>2</sup>

292. Any person who uses false or fraudulent stamps or labels on food of any kind, in cans or jars.<sup>3</sup>

293. Whoever manufactures or sells adulterated candy; or any manufacturer who refuses to furnish samples of candy for analysis.<sup>4</sup>

294. Whoever manufactures or sells adulterated vinegar, or any vinegar containing injurious ingredients; or whoever fails to properly label barrels, etc., containing vinegar.<sup>5</sup>

295. Any person manufacturing or selling artificial butter or cheese, etc., without its being properly stamped.<sup>6</sup>

296. Any person manufacturing out of any oleaginous substance articles designed to be sold as pure butter or cheese.<sup>7</sup>

<sup>91</sup> § 13089.

<sup>92</sup> § 13091.

<sup>93</sup> § 12494.

<sup>94</sup> §§ 1106, 1107, 12779, 12780, 12781, 13364, 13365, 13370-13374.

<sup>95</sup> § 12940.

<sup>96</sup> § 12464.

<sup>97</sup> § 12923.

<sup>98</sup> § 1011.

<sup>99</sup> § 1024.

<sup>1</sup> § 12525.

<sup>2</sup> § 12758.

<sup>3</sup> § 12776.

<sup>4</sup> § 12762.

<sup>5</sup> § 12774 (92 v. 100).

<sup>6</sup> § 12742.

<sup>7</sup> § 12740.

297. Any person dealing in any manufactured substitute for butter or cheese, who neglects to display card with "oleomargarine," or "imitation cheese," on it.<sup>8</sup>

298. Any keeper of hotel, etc., who sells or uses oleomargarine, etc., who neglects to display card stating same.<sup>9</sup>

299. Fraudulently packing or shipping butter or cheese.<sup>10</sup>

300. Fraudulently selling diluted milk.<sup>11</sup>

301. Selling milk falsely labeled.<sup>12</sup>

302. Feeding cows on unhealthy food.<sup>13</sup>

303. The fraudulent use or sale of condensed milk.<sup>14</sup>

304. The use of oleomargarine or imitation cheese in any state, charitable, or penal institution.<sup>15</sup>

305. Whoever sells adulterated or skimmed milk as pure.<sup>16</sup>

306. Whoever manufactures or sells adulterated, etc., wines.<sup>17</sup>

307. Whoever manufactures dynamite without license, or stores the same within the limits of any municipal corporation, or transports the same without being properly labeled.<sup>18</sup>

308. Whoever sells dynamite to minors, or sells the same without being properly labeled, or neglects to keep account of sales.<sup>19</sup>

309. The unlawful sale of morphine.<sup>20</sup>

310. The unlawful sale of goods made by convicts of other states.<sup>21</sup>

311. Any person who uses bottles or boxes, etc., of manufacturer of soda water, mineral water, etc., without consent of owner.<sup>22</sup>

312. Whoever sells intoxicating liquors to a minor, except on the written order of his parent, or physician.<sup>23</sup>

313. Unlawful liquor selling in local option townships.<sup>24</sup>

314. Attempting to influence officials in selecting jurors, or altering certificates of same.<sup>25</sup>

315. Any person summoned as juror, who fails to appear or any juror, who, being qualified, refuses to serve.<sup>26</sup>

316. Any owner of oil-well, who fails to encase same, or who fails to plug abandoned well.<sup>27</sup>

317. Trespassing on state lands.<sup>28</sup>

318. Any member, officer, or employe of board of public works having an interest in any canal contract.<sup>29</sup>

319. Any person who digs ditch or drain near, or removes earth from canal.<sup>30</sup>

8 § 12731.

9 § 12732.

10 § 12749.

11 § 12726.

12 § 12728.

13 § 12729.

14 § 12725.

15 § 12754.

16 § 12719.

17 § 12767.

18 § 12536.

19 § 12535.

20 § 12674.

21 § 6213.

22 § 13169.

23 § 12961.

24 § 13329.

25 § 12829.

26 § 11441.

27 § 6312.

28 § 15306.

29 § 12914.

30 § 12501.



320. Any person who willfully puts or causes to be put, any dead animal into any canal, or slack water pool belonging to the state.<sup>31</sup>

321. Any person who constructs any lock, bridge, dam, on or across any public navigable water, without license therefor.<sup>32</sup>

322. Any person who willfully injures or destroys any lock, bank, waste weir, dam, aqueduct, or culvert, belonging to any state canal.<sup>33</sup>

323. Any person who knowingly signs and delivers a false bill of lading.<sup>34</sup>

324. Making false statement to obtain soldier's relief.<sup>35</sup>

325. Any person who uses trade-mark of lumber dealer without his consent.<sup>36</sup>

326. Any person who removes or destroys trade-mark of timber dealer, or who unlawfully carries away timber stamped, or who unlawfully uses such trade-mark.<sup>37</sup>

327. Any trespasser on fair grounds or other inclosures.<sup>38</sup>

328. Any person owning a building more than two stories high, or who, having control thereof, permits it to be used for the purposes of a boarding-school, without having provided it with safe means of escape in case of fire.<sup>39</sup>

329. Any person who maliciously tampers with gas pipes at Ohio penitentiary.<sup>40</sup>

330. Any owner or agent of any stallion or jack, who permits the same to serve a mare within thirty feet of any public street or alley in any municipal corporation.<sup>41</sup>

• 331. Any minor who enters place where intoxicating liquors are sold or offered for sale, or any person who keeps or has in charge any place where intoxicating liquors are sold or offered for sale, who permits such minor to enter and remain therein.<sup>42</sup>

332. Any elector who exposes his ballot, or falsely says he can not mark it, or any election officer who deceives any elector in marking it, or any person who interferes with any elector.<sup>43</sup>

333. Any person who falsely makes, defaces, or destroys, or who unlawfully signs, files, or suppresses any certificate of nomination, or any letter of withdrawal, or who forges the official indorsement on any ballot, or who marks, destroys, or defaces any ballot, or who takes, or removes, or has any ballot outside of inclosure before the close of polls, or who willfully delays the delivery of ballots.<sup>44</sup>

334. Whoever, being an elector, directly or indirectly, by himself or through any other person, receives any bribe.<sup>45</sup>

<sup>31</sup> § 12649.

<sup>32</sup> §§ 12504.

<sup>33</sup> §§ 12505.

<sup>34</sup> §§ 8993-4.

<sup>35</sup> § 2935.

<sup>36</sup> § 12530.

<sup>37</sup> §§ 13157.

<sup>38</sup> §§ 12519.

<sup>39</sup> §§ 12575.

<sup>40</sup> § 12494.

<sup>41</sup> § 13114.

<sup>42</sup> §§ 12960.

<sup>43</sup> §§ 13294.

<sup>44</sup> §§ 13296.

<sup>45</sup> § 13314.

335. Any person, officer or employe of any loan or building association, who fails to make the reports required by law, and any person who aids or assists any association to do business contrary to law.<sup>46</sup>

336. Whoever manufactures or sells, etc., imitation butter or cheese.<sup>47</sup>

337. Any person, officer, etc., who imitates or displays for sale any imitation of label, mark, name, brand, or device filed with secretary of state, without proper permission.<sup>48</sup>

338. So employing child under sixteen years of age as to endanger life, limb, health, or morals.<sup>49</sup>

339. Any parent abandoning, neglecting to provide for, etc., any child under sixteen years of age.<sup>50</sup>

340. Whoever fails properly to label poisonous substances sold at drug store, etc.<sup>51</sup>

341. Whoever maliciously injures or tampers with any gas-pipe, fixture, etc.<sup>52</sup>

342. Any person, etc., permitting stallion to serve mare within thirty feet of street or alley.<sup>53</sup>

343. Any minor who enters any saloon, beer garden, or other place where intoxicating liquors are sold, except drugstore.<sup>54</sup>

344. Any keeper, etc., of such saloon, beer garden, etc., who permits minor under 18 years of age to be in such place.<sup>55</sup>

345. Any telegraph operator refusing or neglecting to receive or send telegram in cases of accident to, or collision, of trains.<sup>56</sup>

346. Selling or giving away intoxicating liquor in house of ill-fame.<sup>57</sup>

347. Any person in charge of any street car violating law as to stopping car at railway intersections, etc.<sup>58</sup>

348. Any manufacturer of cheese who shall sell or dispose of same without stamping it according to law.<sup>59</sup>

349. Any person engaging in the business of barbering on Sunday.<sup>60</sup>

350. Any person preventing employe from joining labor organization.<sup>61</sup>

351. Any person or firm using unlicensed vehicle, or neglecting to provide license for same.<sup>62</sup>

352. Any person in charge of railroad who fails to

<sup>46</sup> § 13192.

<sup>47</sup> § 12741.

<sup>48</sup> § 13102.

<sup>49</sup> § 13004.

<sup>50</sup> § 12970.

<sup>51</sup> § 12667.

<sup>52</sup> § 12512.

<sup>53</sup> § 13414.

<sup>54</sup> § 12957.

<sup>55</sup> § 12958.

<sup>56</sup> § 9184.

<sup>57</sup> § 13199 (88 v. 567).

<sup>58</sup> § 9124 (88 v. 581).

<sup>59</sup> § 12742.

<sup>60</sup> § 13047 (89 v. 252) ; am. 90 v. 79.

<sup>61</sup> § 12943 (89 v. 269).

<sup>62</sup> § 8937.

comply with the law regulating the rise from station platform to car steps, thereby causing personal injury.<sup>63</sup>

353. Any person owning or having charge of stairs in buildings, tenements, etc., failing to provide hand-rails for stairways.<sup>64</sup>

354. Any person or corporation employing labor in the erection or repair of building, furnishing improper or insufficient scaffolding.<sup>65</sup>

355. Any paroled prisoner who violates his parole.<sup>66</sup>

356. Any agent, owner or tenant in possession, failing to provide fire-escapes.<sup>67</sup>

357. Any person violating provisions as to petroleum oil, natural gas, and mineral water wells.<sup>68</sup>

358. Any dealer, company, etc., offering for sale wine not properly labeled.<sup>69</sup>

359. Any owner, agent, etc., of building in construction who fails to provide counter floors for safety of employes.<sup>70</sup>

360. Any married man representing himself as unmarried.<sup>71</sup>

361. Any person docking tail of horse, or pulling out hair of foretop, mane, or withers.<sup>72</sup>

362. Any person hunting, shooting, killing game, selling or giving away intoxicating liquors, near township park without proper permission.<sup>73</sup>

363. Any person, agent, officer, etc., failing to provide screens for street cars.<sup>74</sup>

364. Any shanty-boat owner who anchors, etc., any shanty-boat on real estate of another without permission.<sup>75</sup>

365. Any person, firm, etc., engaged in cigarette business who fails to display receipt required by law, sells adulterated cigarettes, induces sales by pictures, etc., or sells to minors, etc.<sup>76</sup>

366. Any judge or clerk of election who fails to perform his duties as such according to law.<sup>77</sup>

367. Any person or officer violating provisions as to compulsory school attendance.<sup>78</sup>

368. Any person engaged in hazing.<sup>79</sup>

369. Whoever, in measuring, etc., wheat uses any measure other than the standard half bushel.<sup>80</sup>

370. Any person who shoots, throws, etc., by means of air guns, or other implement, any hard substance upon any street, alley, main or public place.<sup>81</sup>

371. Any person failing to destroy or selling fruit trees infected with black-knot, yellows, etc. See par. 385.

<sup>63</sup> § 8937 (89 v. 347).

<sup>64</sup> § 1006 (89 v. 375).

<sup>65</sup> 12594 (89 v. 380).

<sup>66</sup> 2174.

<sup>67</sup> § 1037.

<sup>68</sup> § 12647.

<sup>69</sup> § 5802.

<sup>70</sup> § 12576.

<sup>71</sup> § 13146.

<sup>72</sup> § 13377.

<sup>73</sup> § 12820.

<sup>74</sup> § 12788.

<sup>75</sup> § 12529.

<sup>76</sup> § 12788 (90 v. 220).

<sup>77</sup> § 13356.

<sup>78</sup> § 12974.

<sup>79</sup> § 12417.

<sup>80</sup> § 6414.

<sup>81</sup> § 12624.

372. Any person unlawfully killing, transporting, possessing, etc., quail.<sup>82</sup>

373. Any person violating law regulating manufacture and sale of oleomargarine.<sup>83</sup>

374. Whoever unlawfully engages in the practice of veterinary medicine or surgery.<sup>84</sup>

375. Any officer neglecting or refusing to perform duty as to depositaries of public funds.<sup>85</sup>

376. Manufacturing clothing, cigars, etc., in close living rooms ("sweat-shops").<sup>86</sup>

377. Wearing of big hats in theaters, etc.<sup>87</sup>

378. Not protecting against dust-producing machines.<sup>88</sup>

379. Not complying with excise tax laws.<sup>89</sup>

380. Frauds as to making or selling sterling or coin silver goods.<sup>90</sup>

381. Unlawfully camping on road or land adjacent.<sup>91</sup>

382. Unlawfully displaying foreign flags on public buildings.<sup>92</sup>

383. Whoever engages in playing public game on Decoration Day within one mile of the speaker's stand during the rendition of the program.<sup>93</sup>

384. Injuring pneumatic tires with tacks, etc., on streets, etc.<sup>94</sup>

385. Keeping or selling fruit trees infected with "yellows," etc.<sup>95</sup>

386. Being guilty of corrupt practices at elections (Garfield law).<sup>96</sup>

387. Whoever unlocks or opens a jury wheel, except by order of court, etc.<sup>97</sup>

388. Whoever, being an officer of a corporation, refuses to comply with the requirements of law.<sup>98</sup>

389. Failure of a county officer to file a report and pay money.<sup>98\*</sup>

390. Neglect or refusal to perform duty by road superintendent.<sup>99</sup>

391. Whoever neglects or violates the law relating to the merit system.<sup>99\*</sup>

392. Whoever neglects his duty as a registrar, etc.<sup>1</sup>

393. Whoever, being a superintendent of banks, etc., who fails to keep secret information obtained in the course of the examinations, etc.<sup>2</sup>

394. Whoever, being a principal, etc., of a public or parochial school, neglects to instruct the pupils in fire drill.<sup>3</sup>

<sup>82</sup> § 1412.

<sup>83</sup> § 12733.

<sup>84</sup> § 13382.

<sup>85</sup> § 2743.

<sup>86</sup> § 1020.

<sup>87</sup> § 13448.

<sup>88</sup> § 1027.

<sup>89</sup> § 13411.

<sup>90</sup> § 13113.

<sup>91</sup> § 13397.

<sup>92</sup> § 12395 (92 v. 89).

<sup>93</sup> § 12949.

<sup>94</sup> § 12517.

<sup>95</sup> § 1109.

<sup>96</sup> § 13323-1.

<sup>97</sup> § 12867.

<sup>98</sup> §§ 12870, 12872.

<sup>98\*</sup> § 12889.

<sup>99</sup> § 12891.

<sup>99\*</sup> § 12895.

<sup>1</sup> § 12897.

<sup>2</sup> § 12898.

<sup>3</sup> § 12900.



395. Soliciting campaign contribution from mine inspector.<sup>4</sup>

396. Policeman failing to deposit stolen property, etc.<sup>5</sup>

397. Divulging school examiners' questions.<sup>6</sup>

398. Payment in script and certain deductions from wages prohibited.<sup>7</sup>

399. Removing or threatening to remove employe for not signing local option petition.<sup>8</sup>

400. Discharging employe for refusing to labor on election day.<sup>9</sup>

401. Life insurance companies discriminating against colored persons.<sup>10</sup>

402. Employing children under age and the school certificate required by law.<sup>11</sup>

403. Neglecting to instruct as to the dangers of fire.<sup>12</sup>

404. Penalty for pupil joining fraternity.<sup>13</sup>

405. Teacher, principal or superintendent failing to give notice of fraternity in school.<sup>14</sup>

406. Board of education to investigate charges of existence of.<sup>15</sup>

407. Suspension of pupils.<sup>16</sup>

408. Officers or agents interested in contracts.<sup>17</sup>

409. Officials forbidden to be interested in.<sup>18</sup>

410. Penalty for violating rules for valuing personal property.<sup>19</sup>

411. Remission or illegal collection of fees.<sup>20</sup>

412. Officer receiving compensation for making appointments.<sup>21</sup>

413. Employing certain minors during school session.<sup>22</sup>

414. Penalty attaching to parents or guardians who have knowledge of minors between eight and fourteen years of age who have not passed to the fifth grade, etc., upon notice from the truant officer, fails to cause such minor to attend a public, private or parochial school, etc.<sup>23</sup>

415. Officer, principal, teacher, or other person, neglecting to perform the duty imposed upon him by law relating to compulsory education or employment of minors, for which a specific penalty is not provided by law.<sup>24</sup>

416. Employing minors without agreeing as to ages, etc.<sup>25</sup>

<sup>4</sup> § 12936.

<sup>5</sup> § 12937.

<sup>6</sup> § 12939.

<sup>7</sup> § 12945.

<sup>8</sup> § 12948.

<sup>9</sup> § 12949.

<sup>10</sup> §§ 12954, 12956.

<sup>11</sup> §§ 12975, 12994.

<sup>12</sup> § 12901.

<sup>13</sup> § 12906.

<sup>14</sup> § 12907.

<sup>15</sup> § 12908.

<sup>16</sup> § 12909.

<sup>17</sup> §§ 12910, 12911.

<sup>18</sup> § 12912.

<sup>19</sup> §§ 12924-1, 12924-3, 12924-4.

<sup>20</sup> § 12930.

<sup>21</sup> § 12935.

<sup>22</sup> § 12976.

<sup>23</sup> § 12977.

<sup>24</sup> §§ 12982, 12983.

<sup>25</sup> § 12991.

417. Working boys under 16 or girls under 18 years of age more than eight hours a day, etc.<sup>26</sup>

418. Employing boy under 18 years of age as a messenger before six o'clock in the morning or after the hour of nine in the evening.<sup>27</sup>

419. Whoever fails to keep a record of minors employed.<sup>28</sup>

420. Whoever employs or permits a girl under 16 years to work where compelled to stand constantly.<sup>29</sup>

421. Whoever prevents a female visitor, as provided by law from entering establishment at reasonable hours for the purpose of making inspection thereof.<sup>30</sup>

422. Neglect to provide for child or pregnant woman.<sup>31</sup>

423. Abandoning child or pregnant woman.<sup>32</sup>

424. Neglect to pay for keeping child in children's home.<sup>33</sup>

425. Persons confined in the penitentiary to be credited with 40 cents per day, to be paid to trustee, etc.<sup>34</sup>

426. Pandering defined and penalty therefor.<sup>35</sup>

427. White slave traffic and penalties.<sup>36</sup>

428. Providing for the issuance of search warrant.<sup>37</sup>

429. Penalties for disseminating immoral literature.<sup>38</sup>

430. Penalties for giving immoral exhibitions; also, lewd pictures.<sup>39</sup>

431. False statements in writing misleading others to their prejudice.<sup>40</sup>

432. Warehouses issuing receipts for goods not received.<sup>41</sup>

433. Issuing receipt containing false statement.<sup>42</sup>

434. Duplicate receipt to be so marked.<sup>43</sup>

435. Negotiable receipt must state ownership.<sup>44</sup>

436. Delivering goods without first obtaining negotiable receipt.<sup>45</sup>

437. Unauthorized use of timber dealer's trade-mark.<sup>46</sup>

438. Negotiating receipt with intent to deceive.<sup>47</sup>

439. Soliciting membership in unauthorized fraudulent beneficiary association.<sup>48</sup>

480. Frauds of officers or medical examiner of fraternal benefit association.<sup>49</sup>

441. Fraud by certificate holder;<sup>50</sup> officer suppressing facts.<sup>51</sup>

442. Unlawful to perform dramatic composition without consent of owner.<sup>52</sup>

<sup>26</sup> § 12996.

<sup>27</sup> § 12996-1.

<sup>28</sup> § 12998.

<sup>29</sup> § 13005.

<sup>30</sup> § 13006.

<sup>31</sup> § 13008.

<sup>32</sup> § 13009.

<sup>33</sup> § 13012.

<sup>34</sup> § 13019.

<sup>35</sup> §§ 13031-1-2-3-4-5.

<sup>36</sup> § 13003-6.

<sup>37</sup> § 13031-8.

<sup>38</sup> §§ 13038, 13039.

<sup>39</sup> § 13041.

<sup>40</sup> § 13105-1.

<sup>41</sup> § 13118.

<sup>42</sup> § 13119.

<sup>43</sup> § 13120.

<sup>44</sup> § 13121.

<sup>45</sup> § 13122.

<sup>46</sup> § 13156.

<sup>47</sup> § 13123.

<sup>48</sup> § 13139.

<sup>49</sup> § 13140.

<sup>50</sup> § 13141.

<sup>51</sup> § 13141-1.

<sup>52</sup> § 13148.

443. Selling bonds, etc., for companies not complying with law.<sup>53</sup>

444. Adulteration of materials used in the manufacture of crockery ware.<sup>54</sup>

445. Fraudulent filing of labor union trade-mark.<sup>55</sup>

446. Wearing badge or button of certain organizations, G. A. R., etc.<sup>56</sup>

447. Misrepresentations inducing lapse, forfeit, etc.<sup>57</sup>

448. Misrepresentation in advertising by insurance company.<sup>58</sup>

449. Advertising not corresponding with verified statement.<sup>59</sup>

450. Publishing fraudulent prospectus.<sup>60</sup>

451. Unlawfully practicing as certified accountant.<sup>61</sup>

452. Using fraudulent tickets at Chautauqua Assembly.<sup>62</sup>

453. Receiving money when bank insolvent.<sup>63</sup>

454. Unlawfully issuing certificate of deposit.<sup>64</sup>

455. Fictitiously borrowing etc., money.<sup>65</sup>

456. Failing to charge certified check.<sup>66</sup>

457. Certifying check when funds inadequate to pay.<sup>67</sup>

458. Resorting to unlawful device.<sup>68</sup>

459. Signing name to order without authority.<sup>69</sup>

460. Declaring dividends greater than earned.<sup>70</sup>

461. False entry on book, etc.<sup>71</sup>

462. Aiding officer to violate any of preceding statutes.<sup>72</sup>

463. Drinking intoxicants aboard train.<sup>73</sup>

464. Prohibiting sale of intoxicants on premises where entertainment is given.<sup>74</sup>

465. Requiring police to enforce above statute.<sup>75</sup>

466. Shipping, transporting, etc., intoxicating liquors under fictitious name.<sup>76</sup>

467. Physicians making unlawful prescriptions.<sup>77</sup>

468. Saloonkeepers making false answer to assessor.<sup>78</sup>

469. Engaging in liquor business after conviction.<sup>79</sup>

470. Engaging in liquor business after abatement as a nuisance.<sup>80</sup>

471. Soliciting order for liquor in dry territory.<sup>81</sup>

472. Free lunch limited to crackers, cheese and pretzels.<sup>82</sup>

473. Sale of lunch not to include drink.<sup>83</sup>

474. Selling liquor 30 days after prohibited in county.<sup>84</sup>

475. Also, in municipality.<sup>85</sup>

53 § 13151.  
54 § 13152.  
55 §§ 13153, 13154.  
56 § 13163.  
57 § 13171.  
58 § 13172.  
59 § 13173.  
60 § 13175.  
61 § 13176.  
62 § 13177.  
63 § 13182.

64 § 13183.  
65 § 13184.  
66 § 13185.  
67 § 13186.  
68 § 13187.  
69 § 13188.  
70 § 13189.  
71 § 13190.  
72 § 13191.  
73 § 13196.  
74 § 13200.

75 § 13201.  
76 § 13216.  
77 §§ 13217, 13218.  
78 § 13219.  
79 §§ 13220, 13221.  
80 § 13222.  
81 § 13223.  
82 § 13224-1.  
83 § 13224-2.  
84 §§ 13225, 13226.  
85 § 13232.

476. Also, in residence district.<sup>86</sup>  
 477. Removal of intoxicating liquors from premises after prohibited within thirty days.<sup>87</sup>  
 478. Druggist selling contrary to local option laws.<sup>88</sup>  
 479. Fraudulent registration.<sup>89</sup>  
 480. Inducing fraudulent registration.<sup>90</sup>  
 481. Personating another in registration.<sup>91</sup>  
 482. Hindering another in registration.<sup>92</sup>  
 483. Procuring unlawful erasures in registration lists.<sup>93</sup>  
 484. Officer permitting false registration.<sup>94</sup>  
 485. Inducing false registration.<sup>95</sup>  
 486. Officer refusing registration.<sup>96</sup>  
 487. Inducing registrar to violate law.<sup>97</sup>  
 488. Acting as registrar, judge or clerk without certificate of appointment.<sup>98</sup>  
 489. Perjury before registrar.<sup>99</sup>  
 490. Money given by corporation for political purposes;<sup>99\*</sup> officer aiding or advising.<sup>1</sup>  
 491. Voting at primary after making a change of party.<sup>2</sup>  
 492. Voting at other than proper voting place.<sup>3</sup>  
 493. Voting at primary more than once.<sup>4</sup>  
 494. Voting at primary when not a resident.<sup>5</sup>  
 495. Voting at primary under a false name.<sup>6</sup>  
 496. Impersonating another;<sup>7</sup> falsely signing certain papers.<sup>8</sup>  
 497. Voting with wrong political party.<sup>9</sup>  
 498. Official refusing to perform duty.<sup>10</sup>  
 499. Refusing to testify as to primary election.<sup>11</sup>  
 500. Delegate or committeeman giving proxy at primary forbidden.<sup>12</sup>  
 501. Acting or voting in place of delegate or committeeman.<sup>13</sup>  
 502. Making false statements about bank.<sup>14</sup>  
 503. Violating laws regulating trading stamps.<sup>15</sup>  
 504. Improper use of stenographer's notes or transcripts thereof.<sup>16</sup>  
 505. Killing skunks out of season.<sup>17</sup>  
 506. Unlawful reinsurance by life company.<sup>18</sup>  
 507. False statements by insurance companies and officers.<sup>19</sup>  
 508. Divulging telephonic communications.<sup>20</sup>

<sup>86</sup> §§ 13234, 13235.  
<sup>87</sup> §§ 13237, 13238.  
<sup>88</sup> §§ 13239, 13240.  
<sup>89</sup> § 13297.  
<sup>90</sup> § 13298.  
<sup>91</sup> § 13299.  
<sup>92</sup> § 13300.  
<sup>93</sup> § 13301.  
<sup>94</sup> § 13302.  
<sup>95</sup> § 13303.  
<sup>96</sup> §§ 13304, 13305.  
<sup>97</sup> § 13306.

<sup>98</sup> § 13307.  
<sup>99</sup> § 13311.  
<sup>99\*</sup> § 13320.  
<sup>1</sup> § 13321.  
<sup>2</sup> § 13327.  
<sup>3</sup> § 13328.  
<sup>4</sup> § 13330.  
<sup>5</sup> § 13331.  
<sup>6</sup> § 13332.  
<sup>7</sup> § 13333.  
<sup>8</sup> § 13334.  
<sup>9</sup> § 13335.

<sup>10</sup> § 13338.  
<sup>11</sup> §§ 13339.  
<sup>12</sup> § 13358.  
<sup>13</sup> § 13359.  
<sup>14</sup> §§ 13383-1.  
<sup>15</sup> § 13399.  
<sup>16</sup> § 13410.  
<sup>17</sup> § 13413.  
<sup>18</sup> § 13416.  
<sup>19</sup> § 13418.  
<sup>20</sup> § 13419.



509. Whoever refuses to allow agricultural commissioner, agents or inspector to enter creamery, car, drug-store, etc.<sup>21</sup>

510. Failing to comply with rules of agricultural commission.<sup>22</sup>

511. Having diseased animal and failing to give the notice required by law.<sup>23</sup>

512. Disposing of diseased animal.<sup>24</sup>

513. Disposing of diseased bees.<sup>25</sup>

514. Articles to be sold by weight or count, unless by written agreement.<sup>26</sup>

515. Officer, etc., certifying false transcript or statement as to public bonds.<sup>27</sup>

516. Violating act in regard to organizing or promoting any insurance company, or its stock, etc.<sup>28</sup>

517. Fraudulently obtaining certificate of title, etc.<sup>29</sup>

518. Certifying check without deposit in bank.<sup>30</sup>

519. Using other than stencil brand on cheese.<sup>31</sup>

520. Failure to support child.<sup>32</sup>

521. Sale of cocaine, opium, etc., in violation of law.<sup>33</sup>

522. Selling fertilizer in violation of law.<sup>34</sup>

523. Violation of law as to sales by weight or count.<sup>35</sup>

524. Common carrier violating act relating to crew on switch engine.<sup>36</sup>

525. Carrying concealed weapons in violation of law.<sup>37</sup>

526. Conspiracy against trade.<sup>38</sup>

527. Deduction of insurance premium for state by employer.<sup>39</sup>

528. Abuse or aiding and abetting delinquency of minor.<sup>40</sup>

529. Importing diseased cattle into state.<sup>41</sup>

530. Divulging information obtained as employe of state liability board of awards.<sup>42</sup>

531. Violating provisions of road dragging act.<sup>43</sup>

532. Violating eight hour per day law for public work.<sup>44</sup>

533. Interfering with elector.<sup>45</sup>

534. Employer failing to furnish information to state liability board of awards.<sup>46</sup>

535. Employer or employe violating or opposing method devised to regulate lobbying.<sup>47</sup>

536. Employer misrepresenting amount of pay roll.<sup>48</sup>

537. Employer refusing to report injuries to employes.<sup>49</sup>

<sup>21</sup> 103 O. L. 329.

<sup>22</sup> 103 O. L. 313.

<sup>23</sup> 103 O. L. 313.

<sup>24</sup> 103 O. L. 313.

<sup>25</sup> 103 O. L. 323.

<sup>26</sup> 103 O. L. 136.

<sup>27</sup> 103 O. L. 179.

<sup>28</sup> 103 O. L. 753.

<sup>29</sup> 103 O. L. 959.

<sup>30</sup> 103 O. L. 383.

<sup>31</sup> 103 O. L. 330.

<sup>32</sup> 103 O. L. 873.

<sup>33</sup> 103 O. L. 505.

<sup>34</sup> 103 O. L. 322, 504.

<sup>35</sup> 103 O. L. 136.

<sup>36</sup> 103 O. L. 193.

<sup>37</sup> 103 O. L. 553.

<sup>38</sup> 103 O. L. 254.

<sup>39</sup> 103 O. L. 89.

<sup>40</sup> 103 O. L. 873.

<sup>41</sup> 103 O. L. 184.

<sup>42</sup> 103 O. L. 74.

<sup>43</sup> 103 O. L. 403.

<sup>44</sup> 103 O. L. 854.

<sup>45</sup> 103 O. L. 94.

<sup>46</sup> 103 O. L. 72.

<sup>47</sup> 103 O. L. 5.

<sup>48</sup> 103 O. L. 90.

<sup>49</sup> 103 O. L. 90.

538. Employer refusing to submit books to inspection.<sup>50</sup>  
 539. Employer violating laws relating to health and safety.<sup>51</sup>  
 540. Making false statement as to child under labor act.<sup>52</sup>  
 541. Violation of law as to false weights and measures.<sup>53</sup>  
 542. Exhibiting motion picture proscribed by censor.<sup>54</sup>  
 543. Sale of farm products by other than standard bushel.<sup>55</sup>  
 544. Hindering authorized person from taking samples of feed stuffs.<sup>56</sup>  
 545. Selling feed stuffs in violation of law.<sup>57</sup>  
 546. Employing females in violation of law.<sup>58</sup>  
 547. Violating law relating to employment of females.<sup>59</sup>  
 548. Violating law protecting fish.<sup>60</sup>  
 549. Forging signature or handwriting to instruments.<sup>61</sup>  
 550. Fraudulent advertising;<sup>62</sup> violating law protecting game.<sup>63</sup>  
 551. Influencing girl to leave industrial home.<sup>64</sup>  
 552. Violating law requiring hunter's license.<sup>65</sup>  
 553. Hunting and trapping in violation of law.<sup>66</sup>  
 554. Violating laws of initiative and referendum petitions.<sup>67</sup>  
 555. Selling insecticides and fungicides in violation of law.<sup>68</sup>  
 556. Operating interurban cars without closets and water.<sup>69</sup>  
 557. Larceny of books, papers and documents.<sup>70</sup>  
 558. Practice of medicine and surgery without certificate.<sup>71</sup>  
 559. Practice of midwifery without a certificate.<sup>72</sup>  
 560. Use of mine oils in violation of law.<sup>73</sup>  
 561. Enticing minors to play at games.<sup>74</sup>  
 562. Sale of toy pistols and firearms to minors.<sup>75</sup>  
 563. Operating motor vehicles contrary to law.<sup>76</sup>  
 564. Operating motor vehicles without a license.<sup>77</sup>  
 565. Operating motor vehicles without the owner's consent.<sup>78</sup>  
 566. Operating motor in meeting on roads in violation of law.<sup>79</sup>  
 567. Violating act regulating publications by newspapers.<sup>80</sup>

<sup>50</sup> 103 O. L. 89, 90.<sup>51</sup> 103 O. L. 109.<sup>52</sup> 103 O. L. 913.<sup>53</sup> 103 O. L. 136, 332.<sup>54</sup> 103 O. L. 400.<sup>55</sup> 103 O. L. 559.<sup>56</sup> 103 O. L. 518.<sup>57</sup> 103 O. L. 319, 518.<sup>58</sup> 103 O. L. 910.<sup>59</sup> 103 O. L. 655.<sup>60</sup> 103 O. L. 335.<sup>61</sup> 103 O. L. 959.<sup>62</sup> 103 O. L. 43.<sup>63</sup> 103 O. L. 341.<sup>64</sup> 103 O. L. 884.<sup>65</sup> 103 O. L. 718.<sup>66</sup> 103 O. L. 337.<sup>67</sup> 103 O. L. 653.<sup>68</sup> 103 O. L. 165.<sup>69</sup> 103 O. L. 64.<sup>70</sup> 103 O. L. 959.<sup>71</sup> 103 O. L. 440.<sup>72</sup> 103 O. L. 440.<sup>73</sup> 103 O. L. 27.<sup>74</sup> 103 O. L. 906.<sup>75</sup> 103 O. L. 906.<sup>76</sup> 103 O. L. 133, 161.<sup>77</sup> 103 O. L. 763.<sup>78</sup> 103 O. L. 524-526.<sup>79</sup> 103 O. L. 556.<sup>80</sup> 103 O. L. 856.

568. Failure to destroy nursery stock in violation of order.<sup>81</sup>

569. Violation of act for preventing occupational diseases.<sup>82</sup>

570. Perjury in registration of land titles.<sup>83</sup>

571. Hindering officer in violation of duty.<sup>84</sup>

572. Practice of osteopathy in violation of law.<sup>85</sup>

573. Trespassing on state pleasure resorts.<sup>86</sup>

574. Violating required inspection of queen bee apiary.<sup>87</sup>

575. Violation by railroads of law relating to safety appliances.<sup>88</sup>

576. Violation of law regulating sale of securities.<sup>89</sup>

577. Soliciting money from prisoners.<sup>90</sup>

578. Violation of law as to spraying orchards.<sup>91</sup>

579. Violation of law requiring examination of steam boilers.<sup>92</sup>

580. Operating switching engine with less than full crew.<sup>93</sup>

<sup>81</sup> 103 O. L. 317.

<sup>82</sup> 103 O. L. 823

<sup>83</sup> 103 O. L. 960.

<sup>84</sup> 103 O. L. 913.

<sup>85</sup> 103 O. L. 441.

<sup>86</sup> 103 O. L. 337.

<sup>87</sup> 103 O. L. 323.

<sup>88</sup> 103 O. L. 117, 193.

<sup>89</sup> 103 O. L. 753.

<sup>90</sup> 103 O. L. 93.

<sup>91</sup> 103 O. L. 495.

<sup>92</sup> 103 O. L. 631.

<sup>93</sup> 103 O. L. 192.

**FELONIES.**

1. Any person offending in any way set forth below is guilty of a felony.

2. Any trustee, superintendent, or other officer, who shall cheat or defraud, or attempt to cheat or defraud, the Ohio Soldiers' and Sailors' Orphans' Home, or any trustee, superintendent, or other officer, who is directly or indirectly interested in any contract of such institution.<sup>1</sup>

3. Any officer or person violating provisions of § 2707 relating to examination of county treasury.<sup>2</sup>

4. Any person who induces false registration, or who induces officer to refuse registration, or whoever falsely registers, or falsely personates another, or hinders or attempts to hinder another from registering, or procures unlawful erasure in ballot lists.<sup>3</sup>

5. Any judge of election who permits any ballot to be in the ballot-box at the opening of the polls, or to be improperly placed there at any time, or whoever is guilty of perjury upon examination by registrar.<sup>3</sup>

6. Counterfeiting registration certificate.<sup>4</sup>

6a. Unlawfully cutting or tapping any telegraph or telephone wire, etc., or using, intercepting or delaying telegraph messages, or unlawfully obtaining, using, or delaying telegraph or telephone messages, or destroying or interfering with property of electric street railway or electric light plant.<sup>5</sup>

9. Any person who forges or counterfeits any receipt of inspector of tobacco, or alters such receipt, or knowingly offers in sale or exchange any counterfeit receipt.<sup>6</sup>

10. Whoever purposely and either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate any rape, arson, robbery, or burglary, kills another.<sup>7</sup>

11. Causing death by maliciously placing obstruction upon railroad, or by displacing or injuring any thing pertaining thereto.<sup>8</sup>

12. Whoever purposely and maliciously kills another.<sup>9</sup>

13. Whoever unlawfully kills another, except as provided for in the last two sections.<sup>10</sup>

14. Whoever administers poison to a person with intent

<sup>1</sup> § 12884.

<sup>2</sup> 2708.

<sup>3</sup> 13286.

<sup>4</sup> 13310.

<sup>5</sup> § 12507.

<sup>6</sup> § 13092.

<sup>7</sup> §§ 12400 (93 v. 223).

<sup>8</sup> § 12401.

<sup>9</sup> § 12403.

<sup>10</sup> § 12404.



to kill or injure such person, or whoever poisons any food, drink, or medicine, well, spring, cistern, or reservoir, with like intent.<sup>1</sup>

15. Whoever, with intent to procure the miscarriage of any woman, prescribes or administers to her any medicine, drug or substance, or uses any instrument or means whatever, unless such miscarriage is necessary to preserve her life, or is advised by two physicians to be necessary for that purpose, shall, if the woman either miscarries or dies in consequence thereof, be deemed guilty of abortion.<sup>2</sup>

16. Whoever has carnal knowledge of a female person forcibly and against her will, or, being eighteen years of age, carnally knows and abuses a female person under sixteen years of age with her consent.<sup>3</sup>

17. Whoever commits the crime of rape.<sup>4</sup>

18. Whoever, by force and violence, or by putting in fear, steals and takes from the person of another any thing of value.<sup>5</sup>

19. Whoever, with malicious intent to maim or disfigure, cuts, bites or slits the nose, ear or lip, cuts out or disables the tongue, puts out or destroys an eye, cuts off or disables a limb, or any member of another person.<sup>6</sup>

20. Whoever maliciously shoots, stabs, cuts or shoots at another person, with intent to kill, wound or maim such person.<sup>7</sup>

21. Whoever assaults another with intent to kill, or to commit rape or robbery upon the person so assaulted.<sup>8</sup>

22. Whoever forcibly or fraudulently carries off or decoys out of this state any person, or arrests or imprisons any person with the intention of having such person carried out of the state.<sup>9</sup>

23. Whoever leads, takes, carries, decoys, or entices away a child under the age of twelve years, with intent unlawfully to detain or conceal such child.<sup>10</sup>

24. Abducting girl from Girls' Industrial Home or other benevolent, penal or reformatory institution.<sup>11</sup>

25. Whoever, either verbally or by any letter or writing, or written or printed communication, sent or delivered by him, demands of any person, with menaces, any chattel, money or valuable security, or knowingly sends or delivers any letter or writing, or any written or printed communication, with or without a name, or with any letter, mark or designation, accusing or threatening to accuse any person of a crime punishable by law, or of any immoral conduct which, if true, would tend to degrade and disgrace such person, or to expose or publish any of his infirmities or

<sup>1</sup> § 12405.

<sup>2</sup> § 12412.

<sup>3</sup> § 12414.

<sup>4</sup> § 12414.

<sup>5</sup> § 12432.

<sup>6</sup> § 12416.

<sup>7</sup> § 12420.

<sup>8</sup> § 12421.

<sup>9</sup> § 12424.

<sup>10</sup> § 12425.

<sup>11</sup> § 14426.

failings, or in any way subject him to the ridicule or contempt of society, or to do an injury to the person or property of any person, with intent to extort or gain from such person any chattel, money or valuable security, or any pecuniary advantage whatsoever, or with intent to compel the person threatened to do any act against his will, shall be deemed guilty of blackmail.<sup>1</sup>

26. Whoever maliciously burns or attempts to burn any dwelling-house, or any other building, coach or car, water-craft or bridge, the property of another person, of the value of fifty dollars.<sup>2</sup>

27. Burning property with intent to prejudice the insurer.<sup>3</sup>

28. Whoever, in the night season, maliciously and forcibly breaks and enters any dwelling-house, kitchen, smoke-house, shop, office, store-house, warehouse, malt-house, still-house, mill, pottery, factory, water-craft, school-house, church or meeting-house, barn or stable, or railroad car, car factory or station-house, with intent to commit a felony, or with intent to steal property of any value; or whoever shall have in his possession any implements used by burglars for house-breaking, with the intention of using such tools burglariously.<sup>4</sup>

29. Whoever maliciously, either by night or day, enters a house and attempts to commit a felony.<sup>5</sup>

30. Whoever, being charged with the collection, receipt, safe-keeping, or disbursement of the public money, or bequest, belonging to the state, or to any county, township, municipal corporation, board of education, cemetery association or company in this state, converts to his own use, or to the use of any other person, body corporate, association or party whatever, or uses by way of investment in any kind of security, stock, loan, property, land or merchandise, or in any other manner or form whatever, or loans with or without interest to any company, corporation, association or individual, any portion of the public money, or any other funds, property, bonds, securities, assets or effects of any kind, received, controlled, or held by him in safe-keeping or in trust for a specific purpose, transfer or disbursement, or in any other way or manner, or for any other purpose, is guilty of embezzlement.<sup>6</sup>

31. An officer, agent, clerk, servant or employe of any person or corporation (except apprentices and persons under the age of eighteen years), who embezzles, or converts to his own use, or fraudulently takes or makes away with, or secretes with intent to embezzle or convert to his own

<sup>1</sup> § 13384.

<sup>2</sup> § 12433.

<sup>3</sup> § 12434.

<sup>4</sup> § 12437.

<sup>5</sup> § 12441.

<sup>6</sup> § 12873 (am. 91 v. 338).

use, any thing of value which may come into his possession by virtue of his employment.<sup>1</sup>

32. Embezzlement by carrier, warehouseman, commission merchant, or manufacturer, or his clerk, agent, or employe, or by a consignor or his agent.<sup>2</sup>

33. Whoever steals any horse, mare, gelding, foal or filly, ass or mule, of any value, or receives, buys or conceals any horse, mare, gelding, foal or filly, ass or mule, that shall have been stolen, knowing the same to have been stolen, with intent to defraud, or knowingly conceals any horse thief.<sup>3</sup>

34. Whoever buys, receives or conceals any thing of value which has been stolen, taken by robbers, embezzled or obtained by false pretense, knowing the same to have been stolen, taken by robbers, embezzled or obtained by false pretense.<sup>4</sup>

35. Whoever steals, destroys, or secretes a will.<sup>5</sup>

36. Any person unlawfully destroying or meddling with railway property.<sup>6</sup>

37. Any person willfully throwing stones or other hard substance, or shooting, at trains or vessels.<sup>7</sup>

38. Whoever maliciously destroys or injures property not his own.<sup>8</sup>

39. Whoever maliciously destroys trees and crops not his own.<sup>9</sup>

40. Whoever purposely and maliciously puts any soap, alkali, etc., into boilers, wells, etc., with intent to injure or damage any person.<sup>10</sup>

41. Whoever puts up false lights, or willfully does any act tending to the immediate loss of a vessel.<sup>11</sup>

42. Whoever begins or sets on foot, or provides or prepares the means for any unauthorized military expedition against the territory or the people of any state of the United States.<sup>12</sup> See also Chapter 29.

43. Dueling, or aiding or abetting a duel.<sup>13</sup> See also Chapter 29.

44. Prize-fighting.<sup>14</sup> See also Chapter 29.

45. Any three or more persons who unite and commit any misdemeanor, while disguised.<sup>15</sup> See also Chapter 29.

46. Whoever, either verbally or in writing, on oath lawfully administered, willfully and corruptly states a falsehood as to any material matter in a proceeding before any court, tribunal, or officer created by law, or in any matter in relation to which an oath is authorized by law.<sup>16</sup>

<sup>1</sup> § 12876. Embezzlement defined, *State v. Baxter*, 14 N. P. (N.S.) 223.

<sup>2</sup> § 12470.

<sup>3</sup> § 12448.

<sup>4</sup> § 12450.

<sup>5</sup> § 12451.

<sup>6</sup> § 12560.

<sup>7</sup> § 12497.

<sup>8</sup> § 12477.

<sup>9</sup> § 12478.

<sup>10</sup> § 12602.

<sup>11</sup> § 12638.

<sup>12</sup> § 12394.

<sup>13</sup> § 12799.

<sup>14</sup> § 12800.

<sup>15</sup> § 12810.

<sup>16</sup> § 12842.



47. Giving bribes to officers or public agents, to influence them in their official duty.<sup>1</sup>

48. Whoever aids, induces, or attempts to induce any convict to escape.<sup>2</sup>

49. Any officer or agent of state, who interests himself in any contract for the use of the state.<sup>3</sup>

50. Any officer, or superintendent, or overseer, who knowingly makes a fraudulent plan, estimate, etc., or permits any work to be done fraudulently.<sup>4</sup>

51. Whoever harbors or conceals any thief or robber, knowing him to be such.<sup>5</sup>

52. Whoever, except a female or a blind person, goes about begging, shall be deemed a tramp. Any tramp who enters dwelling, yard, etc., without the permission or against the will of the owner, or who carries fire-arms, or who does or threatens injury to the person or property of another.<sup>6</sup>

53. Whoever, having a husband or wife, marries another.<sup>7</sup>

54. Persons nearer of kin by consanguinity or affinity than cousins, having knowledge of their relationship, who commit adultery or fornication together.<sup>8</sup>

55. Whoever has carnal knowledge of insane woman.<sup>9</sup>

56. Whoever seduces under promise of marriage.<sup>10</sup>

57. Whoever induces any female under eighteen years of age to have illicit intercourse, or whoever permits it on premises owned or controlled by him.<sup>11</sup>

58. Whoever gives wine, etc., to female, with intent to induce illicit intercourse.<sup>12</sup>

59. Whoever, being over twenty-one years of age, has intercourse with his female pupil.<sup>13</sup>

60. Whoever sells, gives away, etc., obscene literature, or medicine for procuring abortion, or any article for immoral use.<sup>14</sup>

61. Whoever commits the offense of sodomy.<sup>15</sup>

62. Whoever, without lawful authority, takes any dead body from its sepulture, or receives or delivers the same to another.<sup>16</sup>

63. Whoever offers bribes for votes at primary elections.<sup>17</sup>

64. Whoever bribes delegates or electors.<sup>18</sup>

<sup>1</sup> § 12823.

<sup>2</sup> § 12833.

<sup>3</sup> § 12910 (94 v. 391).

<sup>4</sup> § 12912.

<sup>5</sup> § 12841.

<sup>6</sup> § 13408.

<sup>7</sup> § 13022.

<sup>8</sup> § 13023.

<sup>9</sup> § 13025.

<sup>10</sup> § 13026.

<sup>11</sup> § 13027 (92 v. 207).

<sup>12</sup> § 13028.

<sup>13</sup> § 13030.

<sup>14</sup> § 13035.

<sup>15</sup> § 13043.

<sup>16</sup> § 13391.

<sup>17</sup> § 13318.

<sup>18</sup> § 13319.



65. Whoever, being a resident of this state, votes, not being a resident of the county thirty days.<sup>1</sup>

66. Whoever votes at any election in this state, being a resident of another state.<sup>2</sup>

67. Whoever votes more than once at the same election.<sup>3</sup>

68. Whoever procures, assists, etc., another to go or come into a county, of which he is not a resident, to vote.<sup>4</sup>

69. Whoever deceives an elector who can not read, with intent to induce him to vote contrary to his inclination; or whoever fraudulently changes the ballot of any elector.<sup>5</sup>

70. Whoever votes fraudulently.<sup>6</sup>

71. Any judge who knowingly counts fraudulent votes.<sup>7</sup>

72. Whoever unlawfully obtains, or attempts to obtain, possession of ballot-box or ballots.<sup>8</sup>

73. Whoever destroys, or attempts to destroy, ballot-box; or whoever destroys, changes, or tampers with any ballot.<sup>9</sup>

74. Whoever writes fraudulently on poll-books or tally-sheets.<sup>10</sup>

75. Whoever has in his possession any falsely made, forged, or altered poll-books or tally-sheets, with intent to hinder or prevent a fair election.<sup>11</sup>

76. Whoever, being a candidate for office, bribes any elector.<sup>12</sup>

78. Putting adulterated liquors in branded packages.<sup>14</sup>

79. Whoever makes out and presents false claims of indebtedness of any kind to public officers.<sup>15</sup>

80. Selling or conveying land without title.<sup>16</sup>

81. Manufacturing or selling poisoned liquors.<sup>17</sup>

82. Fraudulently obtaining money from insurance companies.<sup>18</sup>

83. Whoever executes and delivers any false or fictitious bill of lading, with intent to defraud.<sup>19</sup>

84. Whoever executes and delivers to any person any false or fictitious warehouse receipts, with intent to defraud, or signs or indorses same.<sup>20</sup>

<sup>1</sup> § 13253.

<sup>2</sup> § 13252.

<sup>3</sup> § 13250.

<sup>4</sup> § 13260.

<sup>5</sup> § 13266.

<sup>6</sup> § 13264.

<sup>7</sup> § 13284.

<sup>8</sup> § 13352.

<sup>9</sup> § 13351.

<sup>10</sup> § 13350.

<sup>11</sup> § 13353.

<sup>12</sup> § 13316.

<sup>14</sup> § 13211.

<sup>15</sup> § 13105.

<sup>16</sup> § 13125.

<sup>17</sup> § 12675.

<sup>18</sup> § 13133.

<sup>19</sup> § 13115.

<sup>20</sup> § 13117.

85. Any person in whose name property has been shipped to a consignee, who, having received an advancement on same from consignee, disposes of any such property in any other way than as he agreed.<sup>1</sup>

86. Whoever sends letters, etc., to fraudulently obtain money.<sup>2</sup>

87. Whoever commits any fraud in sale of grain, seed, etc., or any negotiation of any notes, etc., obtained by such fraud.<sup>3</sup>

88. Whoever forges or alters note, bond, lease, will, bank bill or note, etc., or utters or publishes the same, with intent to defraud.<sup>4</sup>

89. Whoever fraudulently uses the fac-simile signature of governor.<sup>5</sup>

90. Whoever alters, forges, or counterfeits judicial record.<sup>6</sup>

91. Whoever forges or counterfeits brand of inspector appointed by law, or uses same.<sup>7</sup>

92. Whoever counterfeits coins, or utters or puts off such coins, or makes or keeps instruments to counterfeit coins.<sup>8</sup>

93. Whoever gilds current coin, or puts into circulation any false or gilded money.<sup>9</sup>

94. Whoever falsely makes or counterfeits issues of the United States, or passes or has in possession and conceals same, with intent to pass or to defraud.<sup>10</sup>

95. Whoever prints from genuine plates, except for the use of the United States, or whoever engraves, sells, brings into the state, or has in his possession counterfeit plate, or whoever makes, sells, brings into the state prints or impressions of issues of the United States, except for the use of the United States.<sup>11</sup>

96. Whoever engraves or keeps plate for counterfeiting, or whoever alters or defaces any bank bill, with fraudulent intent.<sup>12</sup>

97. Whoever has in possession or disposes of counterfeit coin, or counterfeit or fictitious bank notes.<sup>13</sup>

98. Whoever attempts to pass counterfeit coin or bank notes.<sup>14</sup>

99. Whoever unlawfully uses or has possession of dynamite.<sup>15</sup>

100. Any person who willfully injures or destroys any lock, bank, waste weir, dam, aqueduct, or culvert belonging to any state canal.<sup>16</sup>

<sup>1</sup> § 13143.

<sup>2</sup> § 13144 (93 v. 168).

<sup>3</sup> § 13129.

<sup>4</sup> § 13083.

<sup>5</sup> § 13084.

<sup>6</sup> § 13085.

<sup>7</sup> § 13090.

<sup>8</sup> § 13094.

<sup>9</sup> § 13095.

<sup>10</sup> § 13096.

<sup>11</sup> § 13098.

<sup>12</sup> § 13099.

<sup>13</sup> § 13100.

<sup>14</sup> § 13101.

<sup>15</sup> § 12533.

<sup>16</sup> § 14024.

101. Whoever, directly or indirectly, by himself or through any other person, either bribes or attempts to bribe any voter, or receives a bribe.<sup>1</sup>

103. Any officer, agent, etc., of any loan or building association, who embezzles or misapplies any of the moneys of such association; or who unlawfully raises or receives money for and in the name of such association; or who unlawfully signs the name of any person to any order, warrant, etc., without proper written authority; or any member of the board of directors who shall vote to declare a false dividend for the purpose of defrauding; or who makes or certifies to any false entry in book, report, etc., of or to such association, for the purpose of deceiving or defrauding; and every person who with fraudulent intent aids or abets any officer or other person in any violation of this section.<sup>3</sup>

104. Any person who knowingly enters any horse, mare, gelding, colt, or filly under an assumed name, out of its proper class, for competition, where any prize is competed for by contests of speed.<sup>4</sup>

106. Any person entering horse, mare, etc., for prize under assumed name, or out of its proper class.<sup>6</sup>

107. Any person who misrepresents or disguises horse, mare, etc., or enters same out of its proper class.<sup>6</sup>

<sup>1</sup> § 13312 (89 v. 451).

<sup>3</sup> § 12472.

<sup>4</sup> § 5864 (88 v. 547).

<sup>6</sup> § 5865 (90 v. 8).

## MISDEMEANORS OR FELONIES.

1. The following offenses are misdemeanors or felonies, and any person offending in any way set forth below is guilty of a misdemeanor or of a felony, according to the degree of the offense.<sup>1</sup>

2. Any person who steals stranded or shipwrecked property.<sup>2</sup>

3. Embezzlement of negotiable instruments before delivery.<sup>3</sup>

4. Embezzlement of any thing carried for hire, by the carrier.<sup>4</sup>

5. Embezzlement by an inn-keeper of articles intrusted to him for safe keeping.<sup>5</sup>

6. Embezzlement by carrier, warehouseman, commission merchant, etc.<sup>6</sup>

7. Embezzlement by municipal and school officers.<sup>7</sup>

8. Whoever, being intrusted with the care, custody, or control of any property of the state, sells the same with intent to defraud.<sup>8</sup>

9. Whoever maliciously kills or injures any domestic animal, the property of another.<sup>9</sup>

10. Whoever steals any thing of value is guilty of larceny; and if the value of the thing stolen is thirty-five dollars or more, it is grand larceny, which is a felony; or if the value is less than that sum, it is petit larceny, which is a misdemeanor.<sup>10</sup>

11. Trespassing, unlawfully cutting timber, etc., on lands of another, or of the State of Ohio.<sup>11</sup>

12. Burning personal property to the value of thirty-five dollars or more is a felony; of less value than thirty-five dollars, is a misdemeanor.<sup>12</sup>

13. Any county auditor who makes fraudulent entry of tax omissions.<sup>13</sup>

14. Any member of a board of education organized under the laws of this state, who receives compensation for services, except as clerk or treasurer of said board.<sup>14</sup>

16. Any engineer who violates the duties prescribed by law, at railroad crossings, is guilty of a misdemeanor. Any person who permits a car to remain on any street,

<sup>1</sup> See Chap. 22, par. 33.

<sup>2</sup> 6439.

<sup>3</sup> 12468.

<sup>4</sup> 12469.

<sup>5</sup> 12469.

<sup>6</sup> 12470.

<sup>7</sup> 12878.

<sup>8</sup> § 12880.

<sup>9</sup> § 13361.

<sup>10</sup> § 12447.

<sup>11</sup> § 12455.

<sup>12</sup> § 12435.

<sup>13</sup> § 12919.

<sup>14</sup> § 12883.



road, or highway, is guilty of a misdemeanor. When death results from such violation, the offense is a felony.<sup>1</sup>

16. Whoever, by any false pretense, with intent to defraud, obtains any thing of value, or the signature of another to any note, bond, etc., or whoever disposes of any such note, bond, etc.<sup>2</sup>

<sup>1</sup> 5§ 12459, 12550.

<sup>2</sup> § 13104.

## CHAPTER 33.

## MISCONDUCT OF OFFICERS, AND OF OTHERS TOWARD THEM.

1. *Resisting or abusing ministerial officers.* Whoever abuses or knowingly and willfully resists or obstructs any constable, or other officer, in the execution of his office, is liable to be fined not more than five hundred dollars, or imprisoned not more than thirty days, or both.<sup>1</sup>

2. *Intimidating officer, witness, or juror, or obstructing due administration of justice.* Whoever, corruptly, or by threats or force, endeavors to influence, intimidate, or impede any officer, juror, or witness in any court in the discharge of his duty, or by threats or force obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, may be fined not more than one hundred dollars, or imprisoned not more than twenty days, or both.<sup>3</sup>

3. *Extortion by officer.* An officer under the constitution or laws of this state who knowingly asks, demands, or receives any fee or reward, other than is allowed by law, to execute or do his official duty, or knowingly charges, asks, demands or receives any more or greater fees or costs than are allowed by law for such official duty, or engages in, or suffers others in his employ to engage in, any business which by reason of his office he is prohibited from doing, is liable to be fined not more than two hundred dollars, or imprisoned not more than twenty days, or both. An officer convicted under this paragraph forfeits his office, and it must be declared by the court to be vacant; and such convict will, for seven years thereafter, be incapable of holding any office of honor, profit, or trust in this state.<sup>4</sup>

4. *Injuring or defrauding under color of office.* A constable or other ministerial officer, and every deputy or subordinate of any such officer, who, by color of or in the execution of his office, willfully or corruptly injures, defrauds, or oppresses any person, or attempts to defraud, injure, or op-

<sup>1</sup> § 12858.

<sup>3</sup> § 12866. No prosecution can be commenced under this section after one year after the offense is committed. *Ib.*

<sup>4</sup> § 12916.

press any person, is liable to be fined not more than two hundred dollars.<sup>1</sup>

5. *Usurpation of office and oppression.* Whoever takes upon himself to exercise, or officiate in, any office or place of authority in this state, without being lawfully authorized, and whoever, by color of his office, willfully and corruptly oppresses any person, under pretense of acting in his official capacity, is liable to be fined not more than three hundred dollars, or imprisoned not more than twenty days, or both.<sup>2</sup>

6. *Neglecting, delaying, or refusing to perform their duty in criminal cases.* A constable or other ministerial officer who willfully refuses or neglects to perform any duty he is required by law to perform, in any criminal case or proceeding, and every officer whose duty it is to execute the same who delays to serve any warrant legally issued in any criminal case, which is delivered to him to execute, when in his power to serve the same, either alone or by calling assistance, if the offense charged be a felony, is liable to be fined not more than five hundred dollars, or imprisoned not more than thirty days, or both, or, if the offense be a misdemeanor, be fined not more than one hundred dollars, or imprisoned not more than twenty days, or both. An officer convicted under this section may be removed from office by order of the court.<sup>3</sup>

7. *Escape or rescue of prisoner.* Whoever, having lawfully the custody of a person charged with or convicted of an offense, voluntarily suffers such prisoner to escape and go at large, and whoever rescues such prisoner by force from the custody of such person, or from a jail, or any place of confinement, may be fined not more than five hundred nor less than fifty dollars, or imprisoned not more than three months, or both.<sup>4</sup>

8. *Unclean jail; too lenient treatment of prisoner.* A jailer or other person having the care and custody of any jail, who suffers it to become foul or unclean, so that the health of any prisoner may be endangered, or suffers any prisoner, sentenced to imprisonment for any criminal offense, to be dealt with in a manner less strictly than intended by the sentence, is liable to be fined not more than one hundred dollars.<sup>5</sup>

9. *When officer liable for damages for neglect.* Generally, when the performance of a public duty is imposed by statute upon a public officer, such as a constable, sheriff, etc., and he willfully neglects to perform that duty, by which neglect another suffers some special damage, the person

<sup>1</sup> The sheriff, coroner, jailer, clerk, the county recorder, auditor, treasurer, and assessor are also included in this. See § 12915.

<sup>2</sup> § 12925.

<sup>3</sup> § 12850.

<sup>4</sup> § 12832.

<sup>5</sup> § 12849.

thus guilty is liable to an action for such damages, in favor of the party injured, unless the statute creating the duty provides a peculiar and exclusive remedy; and in general such remedy is not taken away by the mere annexation of a penalty for the public wrong, recoverable by indictment or at the suit of a common informer.<sup>1</sup>

<sup>1</sup> Swan's Treatise, 355, citing 14 O. S. 64; 19 Ib. 21; 7 Ib. 109. But where the duty is imposed by statute upon minor political organizations or *quasi* corporations, without their consent, for purposes of public policy and not for their own benefit, but that of the public at large, such as county commissioners, trustees of the township, city council, and the like, such omission of public duty, in general, lays no foundation for the recovery of private damages, unless such recovery is expressly authorized by statute. Ib.



## CHAPTER 34.

## CRUELTY TO CHILDREN AND ANIMALS, ADULTERATIONS OF FOODS, MEDICINES, ETC.; POWERS AND DUTIES OF CONSTABLES, MARSHALS, AND OTHER OFFICERS AS TO.

1. *Societies for prevention of cruelty ; agents of, etc.* The Ohio Humane Society is regularly incorporated, and has for its object the inculcation of humane principles, and to secure the enforcement of laws for the prevention of cruelty, especially to children and animals.<sup>1</sup> Duly incorporated societies for the prevention of cruelty to animals exist in some counties, which may become branches of said Humane Society;<sup>1</sup> and each of the societies above designated may appoint agents, whose duties, in part, are to enforce the laws relating to such cruelties.<sup>2</sup>

2. Such agents, whose appointments as such have been approved by the mayor of the municipal corporation or by the probate judge of the county within which they may act as stated in this paragraph, may arrest any person found violating any law for the protection of persons or animals, or the prevention of cruelty thereto; and upon making such arrest must forthwith convey the person arrested before some court or magistrate having jurisdiction of the offense, and there make complaint against him.<sup>3</sup>

3. In some cases, ministerial officers of magistrates' courts are appointed such agents.

4. *Interpretation of certain words.* In this chapter, and in every law of the state relating to or in any manner affecting animals, the word "animal" must be held to include every living dumb creature; the words "torture," "torment," and "cruelty," must be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief; and the words "owner" and "person" must be held to include corporations; and the knowledge and acts of agents and employes of corporations, in regard to animals transported,

<sup>1</sup> § 10062.

<sup>2</sup> See more fully, §§ 10062, 10067.

<sup>3</sup> §§ 10065-10072.

owned, employed by, or in the custody of a corporation, must be held to be the act of such corporation.<sup>1</sup>

5. *Magistrates may authorize certain inspections.* When complaint is made, on oath or affirmation, to a magistrate or court authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or affecting animals are being or are about to be violated in any particular building or place, such magistrate or court must issue and deliver immediately a warrant directed to any constable, police officer, or agent of such association, or sheriff, authorizing him to enter and search such building or place, and to arrest any person there present violating or attempting to violate, any such law, and to bring such person before some court or magistrate of competent jurisdiction within the city, village, or county within which such offense has been committed, to be dealt with according to law; and such attempt must be held to be a violation of such law, and will subject the person charged therewith, if found guilty, to the penalties provided therein.<sup>2</sup>

6. *Police powers of officers and agents.* An officer, agent, or member of any such association may interfere to prevent the perpetration of any act of cruelty to animals in his presence, and may use such force as may be necessary to prevent the same, and to that end may summon to his aid any bystanders.<sup>3</sup>

7. *Officers may require policemen to act.* Any such association may require the constable of any township, the marshal or policemen of any city or village, the agent of any such association, or the sheriff of any county, when the laws for the prevention of cruelty to animals have been violated, to take possession of any animal cruelly treated, in their respective counties, cities, or villages, and deliver the same to the proper officers of such association; and for such service, and for all services rendered in carrying out the provisions of this chapter, such officers, and the officers and agents of the association, must be allowed and paid such fees as they are allowed for like services in other cases, which must be charged as costs, and reimbursed to the association by the person convicted.<sup>4</sup>

8. *Constable, etc., may care for animals unlawfully impounded.* When an animal is impounded, yarded, or confined, and continues without necessary food, water, or proper attention for more than fifteen successive hours, any constable or other person may, from time to time, and as often as it may be necessary, enter into and upon any place in which such animal is so impounded, yarded, or confined, and sup-

<sup>1</sup> § 10074.

<sup>2</sup> § 13491.

<sup>3</sup> 10073. See pars. 36, 37 of Chap. 3, as to such aid.

<sup>4</sup> § 10075.

ply it with necessary food, water, and attention, so long as it remains there, or may, if necessary or convenient, remove such animal, and will not be liable to an action for such entry; and the reasonable cost of such food, water, and attention may be collected by him of the owner of such animal, and the animal will not be exempt from levy and sale upon execution issued upon a judgment therefor.<sup>1</sup>

9. *Jurisdiction of magistrates as to such cruelty, and as to certain adulterations.* Any justice of the peace, within his county and city, police judge or mayor of any city or village, within his city or village, has jurisdiction in case of violation of the laws to prevent adulteration of food and drink, the adulteration and deception in the sale of dairy products, and drugs, and medicines, and any violation of the law for the prevention of cruelty to animals, or under section sixty-nine hundred and eighty-four of the Revised Statutes, or section sixty-nine hundred and eighty-four (a) thereof. If such prosecutions be before a justice of the peace, and a trial by jury be not waived, the said justice must issue a venire to any constable of the county, containing the names of sixteen electors of the county to serve as jurors to try such case, and make due return thereof, and to fill the panel with by-standers when so ordered by the magistrate.<sup>2</sup>

<sup>1</sup> § 10079.

<sup>2</sup> § 13423. Special provisions are made as to costs. See also pages — and —.

The sections mentioned in paragraph 9 above are as follows:

Sec. 12968. Whoever takes, receives, hires, employs, uses, exhibits, or in any manner, or under any pretense, sells, apprentices, gives away, lets out, or otherwise disposes of, to any person, any child under the age of fourteen years, for or in the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, contortionist, rider, or aerobat, or for or in any obscene, indecent, or immoral purpose, exhibition, or practice, or for or in any business, exhibition, or vocation injurious to the health or dangerous to the life or limbs of such child, or causes, or procures, or encourages any such child to engage therein, or causes or permits any such child to suffer, or inflicts upon it unjustifiable physical pain or mental suffering, or has any such child in custody for any of the purposes aforesaid, shall be fined not more than two hundred dollars, or imprisoned not more than six months, or both.

Sec. 12428. Whoever tortures, torments, cruelly or unlawfully punishes, or willfully, unlawfully, and negligently deprives of necessary food, clothing, or shelter, any person, shall be fined not more than two hundred dollars, nor less than ten dollars, or imprisoned for not more than six months, or both.

Section 12969 provides that nothing contained in section 12428 shall apply to or affect the taking part without remuneration of such child, with the consent of its parents or guardian, in a church, or any school or academy, or at a concert or entertainment given for charitable purposes, or by a church or any school, academy, charitable, eleemosynary or religious institution.



10. *Search warrant, in certain cases, etc.* When complaint is made, on oath or affirmation, to a magistrate or court authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or affecting animals are being or are about to be violated in any particular building or place, such magistrate or court must issue and deliver immediately a warrant directed to any sheriff, constable, police officer, or agent of such association, authorizing him to enter and search such building or place, and to arrest any person there present violating or attempting to violate, any such law, and to bring such person before some court or magistrate of competent jurisdiction within the city, village, or county within which such offense has been committed, to be dealt with according to law; and such attempt must be held to be a violation of such law, and will subject the person charged therewith, if found guilty, to the penalties provided therein.<sup>1</sup>

11. For further provisions as to search-warrants, see Chapter 30.

12. *Duties of constable, marshal, police officer, sheriff, etc., as to cock-fighting.* When a sheriff, constable, marshal, police officer, or agent above mentioned has reason to believe that any person within his jurisdiction is about to violate the provisions of section 13378, he must forthwith arrest such person, and take him before a justice of the peace, mayor, or police judge.<sup>2</sup>

13. Said section 13378 provides that whoever engages in or is employed at cock-fighting, dog-fighting, bear-baiting, pitting one animal against another of the same or of a different kind, or any similar cruelty to animals, or receives money for the admission of any person to any place kept for any such purpose, or uses, trains, or possesses a dog or other animal for the purpose of seizing, detaining, or maltreating, any domestic animal, shall be fined not more than one hundred and fifty nor less than five dollars,

<sup>1</sup> § 13491.

<sup>2</sup> § 13478.

Upon the proper affidavit being filed, such officer must hear the witnesses produced, on oath, and if he find the complaint true, order the accused to enter into a recognizance, with sufficient sureties, in a sum not less than one hundred dollars nor more than five hundred dollars, that he will not violate the provisions of said section 13378 within one year thereafter, within this state, and in default of such recognizance the officer must commit the accused to jail, there to remain until such order is complied with, or he is otherwise discharged by due course of law, or until he makes and subscribes an oath, in the presence of two witnesses, that he will not violate the provisions of said section. Severe penalties are provided for subsequent convictions. § 13491.



or imprisoned not more than thirty nor less than ten days; and that any one who knowingly purchases a ticket of admission to any place mentioned in this section, or is present thereat, or witnesses such spectacle, shall be deemed an aider and abettor.

14. *Who may require officer to make arrest.* A member of any such association may require the sheriff of any county, the constable of any township, the marshal or policemen of any city or village, or the agent of any such association, to arrest any person found violating the laws in relation to cruelty to persons or animals, and to take possession of any animal cruelly treated, in their respective counties, cities, or villages, and deliver the same to the proper officers of such associations.<sup>1</sup>

15. *Fees.* For such service, and for all services rendered in carrying out the provisions of this chapter, such officers, and the officers and agents of the association, must be allowed and paid such fees as they are allowed for like services in other cases. Such fees must be charged as costs, and reimbursed to the association by the person convicted.<sup>2</sup>

<sup>1</sup> § 10075.

<sup>2</sup> § 10080.

## CHAPTER 35.

## DOMESTIC ANIMALS AT LARGE.

1. Any constable, or supervisor of any township, or any marshal or constable of any city or village, must, on view or information, and any person may, on finding at large any animal or animals mentioned in paragraph 3 below, take up and confine such animal or animals at once, and give notice of such taking up to the owner, if known, and if not known, by posting notices describing such animals therein, in at least three public places within the township; and if the owner does not appear and claim his property, and pay all charges for taking up, advertising, and keeping the same, within ten days from the date of the notice, the animals may be proceeded with under the laws regulating estrays.<sup>1</sup>

2. The mere act of any such animal running at large in or upon any of the places mentioned in paragraph 3 will be *prima facie* evidence that such animal is so running at large contrary to law; but if it be proven that such animal escaped from the owner or keeper thereof without his knowledge or fault, then it must be given up to the owner or keeper, upon payment of a reasonable compensation for taking up and keeping it.<sup>1</sup>

3. *What animals not to run at large without permit.* The statutes provide that no person or corporation, being the owner or having the charge of any horses, mules, cattle, sheep, goats, swine, dogs or geese, shall suffer the same to run at large in any public road or highway, or in any street,

<sup>1</sup> §§ 5817, 14954-14965, for the law as to estrays or strays

Cattle found running at large may be taken up, whether they are at large with or without the consent or fault of the owner. Within the meaning of the section the animals named are at large, contrary to the provisions of the law, when they are at large without the permission provided for above. *Sloan v. Hubbard*, 34 O. S. 583.

The right to take up and confine animals running at large, is not affected by the failure of the township trustees to establish a pound. *Ib.*

Where, without the fault of the owner, a horse passes from such owner's inclosure over or through a line fence into the inclosure of an adjoining proprietor, and thence through a gap in a fence into the inclosure of another and adjacent proprietor, he is not running at large contrary to the provisions of section 5809; and no person is authorized to take up and confine him until the owner pay or tender compensation or other charges, as provided by sections 5817 and 5820. *Rutter v. Henry*, 46 O. S. 272.

lane, or alley, or upon any uninclosed land, or cause such animals to be herded, kept, or detained for the purpose of grazing the same on premises other than those owned or occupied by the owner or keeper of such animals, except as provided in paragraph 4 below.<sup>1</sup>

4. *Permits for animals to run at large.* General permission may be granted by the commissioners of any county for any animal named in the preceding paragraph to run at large in their respective counties. In counties where there is no general permission, township trustees may grant special permits, directed to individuals, and for particular animals described therein, revokable at the discretion of the township trustees, upon three days' notice in writing to the owner of such animal. Such permission, whether general or special, terminates on the first Monday of March, in each year; but no permit can be granted for any swine to run at large. In case any person permits any swine belonging to him, or being under his control, to run at large, he will thereby be deprived of the benefit of any permit issued to him, as to any domestic animals whatsoever, and also of the benefits of any general permit issued by the county commissioners, and will be subject to all the fines and penalties provided in paragraph 5 below.<sup>2</sup>

5. *Penalty.* If any constable, supervisor, or marshal, above named, willfully neglects to perform any of the duties above required, he may be fined not more than twenty-five dollars, or imprisoned not more than ten days, or both.<sup>3</sup>

6. *Fees for taking up animals.* The person or officer taking up any such animal is entitled to charge and receive from the owner the following fees, in addition to those authorized by the law regulating estrays, to wit: for taking up and advertising each animal of the horse or mule kind, one dollar; each head of neat cattle, seventy-five cents; each swine, fifty cents; each sheep or goose, twenty-five cents, and also reasonable pay for keeping the animal or animals; but for taking up any single herd or flock, the fee can not exceed five dollars, whenever the flock or herd belongs to one person.<sup>4</sup>

<sup>1</sup> § 5809.

Any person violating the provisions of this paragraph is liable to forfeit and pay for every such violation, as penalty therefor, not less than one dollar, nor more than five dollars; and continued violation, after notice or prosecution, must be held to be an additional offense for each and every day of such continuance. *Ib.* *Rutter v. Henry*, 46 O. S. 272.

<sup>2</sup> § 5811.

<sup>3</sup> § 12938

<sup>4</sup> § 5820.

## STRAYS.

7. *Who may take up strays; his duties, etc.* Any person holding in possession land in this state for three years or more, by deed, title bond, or lease, may take up any stray animals running at large within his township. No one else is entitled to the fees specified in paragraph 11, below.<sup>1</sup>

8. Such person must, within three days, leave a description of the stray or strays, their marks, brands, etc., with the township clerk, and within five days must post such description in three places in the township, and must send to the clerk of the court a fee of twenty-five cents, and such description of all such strays except hogs or sheep. If no one claims such strays within twenty days, the taker-up must go before a justice of his township and make oath as to where he found the strays, etc., and pay him a fee of twenty-five cents. Such justice must cause them to be appraised and described by two freeholders, and this appraisal and description must be recorded in the justice's stray book.<sup>2</sup>

9. *Warrant of release.* If any other person than such as mentioned in paragraph 7, above, takes up any such strays, the justice must, on complaint made, issue his warrant to the constable for the removal of such strays, and their delivery to some resident of the township owning or holding land as set forth in paragraph 7, above; and if no such resident will receive the strays, the constable must suffer them to go at large, to be taken up by some one legally qualified, as stated in paragraph 7.<sup>3</sup>

10. *Strays outside of settlement.* Any person may take up any stray or strays at large outside the bounds of any settlement. Such person must then proceed as directed in paragraphs 7 and 8, above; but if he be not such freeholder as described above, and a resident of the county, he must give to the justice security for the safe-keeping and delivery of such strays to their proper owner; and if he do not give such security, the justice must issue his warrant to the constable as specified in paragraph 9, above, and the constable must proceed under it just as directed in that paragraph.<sup>4</sup>

11. *Reclaiming stray; fees; sale of strays by constable.* The owner of any such stray may, within four months after its taking up, prove his ownership before the justice, and receive the animal, first paying the taker-up as follows: for each animal of the horse kind, one dollar; for every head

<sup>1</sup> § 14954.<sup>2</sup> §§ 14956-14957.<sup>3</sup> § 14958.<sup>4</sup> § 14959.



of neat cattle, fifty cents; for every sheep, hog, or goat above six months old, twelve and a half cents, together with the legal fees paid by the taker-up, and reasonable charges for keeping such strays; but if the taker-up and the owner disagree on the sum to be paid for keeping, either party may apply to a justice in the township to nominate three disinterested freeholders, to make such allowance for keeping such strays as to them shall appear just, and forthwith certify the same under their hands to such justice upon oath. If the owner fails or refuses to pay the sum adjudged, and said fees, within forty days thereafter, the taker-up may deliver such stray or strays to any constable of the township, who must, after giving ten days' notice by advertisement at three of the most public places in the township, of the time and place of sale, proceed to sell them for ready money to the highest bidder, to satisfy the costs and said charges. The constable, after paying to the taker-up said fees and charges, and deducting one dollar for his own fees, must pay the remainder to said owner.<sup>1</sup>

12. *When taker-up becomes owner ; constable's duties.* When the appraised value of any stray or strays of the same species so taken up, does not exceed seven dollars for the whole number taken up and reported at one time, and no person appears within four months after such taking up, and proves his or her right thereto, the right to such stray or strays vests in the taker-up; but if the valuation exceeds seven dollars, and no owner so appears, the taker-up must apply to the justice designated in paragraph 8, for a copy of the appraisement there mentioned, which the justice must furnish, and which the taker-up must forthwith deliver to a constable of the township. This constable must immediately advertise such stray or strays for sale, at three public places within the township, mentioning the time and place of sale, which must be at least ten days from the time of advertising, and which sale must be made at some public place in said township, if the stray be of the horse kind, but if of any other kind of strays, it must be sold at the residence of the taker-up between the hours of ten o'clock A. M. and four o'clock P. M., at which time and place the taker-up must deliver such stray or strays to the constable, and take his receipt therefor, and transmit the same to the township treasurer.<sup>2</sup>

13. *Sale and adjustment, etc., of proceeds, etc.* The constable must proceed to sell such strays to the highest bidder, upon a credit of nine months, for the residue of the purchase money, after paying the expense of taking up, posting, and keeping, and one dollar as his own fees. This expense must

<sup>1</sup> § 14960.

<sup>2</sup> § 14961.

be ascertained as directed in paragraph 11. After paying the above expenses and fees, the constable must take an obligation from the purchaser for the balance due, with one or more sufficient sureties resident within the township, payable to the township treasurer, or his successor in office, and deliver it to the said treasurer. The constable must take duplicate receipts for strays so sold, one of which receipts he must file with the township clerk, together with his certificate, stating to whom said property was sold, and the amount for which it was sold.<sup>1</sup>

14. *If any stallion*, one and a half years old, or upward, is found running at large out of the inclosed ground of its owner or keeper, any person may take it up, and at once give notice to its owner or keeper, if known; and if he do not appear within three days thereafter, and pay to the said taker-up, two dollars as a compensation for his trouble, the taker-up must proceed to advertise said horse; and the same proceedings must be had, in every respect, as hereinbefore provided in cases of stray horses; and the taker-up may, after the expiration of twenty days from the time of advertising, geld, or procure to be gelded, the said horse, at the risk and expense of the owner.<sup>2</sup>

### DRIFTS.

15. *Boat, raft, etc., adrift, may be taken up.* Any person or persons finding any boat, water-craft, raft, or piece of raft, or other valuable property gone or going adrift, within this state, or any of the waters adjoining thereto, may take up and secure the same; and if no person claims or proves his right thereto within thirty days thereafter, the taker-up must cause it to be viewed by two freeholders or householders of the township, who must, after such view, give a written description and appraisement of said property, and certify the same under their hands; which certificate the taker-up must deliver within five days to some justice of the peace within the township. This justice must make a record thereof in his stray book; and must send this certificate to the clerk of the court of the county.<sup>3</sup>

16. If the taker-up is not a freeholder or householder, within the county, the justice may require him to give security, as in the case of stray animals, in paragraph 10. If not given, the justice may take such property into his own possession, or deliver it to any freeholder in the township, who must take charge thereof; and the same proceedings must be had as in case of persons taking up stray animals under this chapter.<sup>4</sup>

<sup>1</sup> § 14962.

<sup>2</sup> § 14965.

<sup>3</sup> §§ 14966, 14967.

<sup>4</sup> § 14967.

17. *How owner of drift may reclaim it.* The owner of such property, on proving his right thereto, within two months after its taking up, and paying to the taker-up, for each flat or keel boat, scow, or lighter, and for each skiff, pirogue, or other valuable property, such reward or compensation as said justice shall deem reasonable, together with the fees allowed by this chapter, will be entitled to demand and receive such property so taken up.<sup>1</sup>

18. *When drifts to be sold by constable; how, etc.* If the appraised value of such boat or other property does not exceed five dollars, and if no person appears and proves his right thereto within two months after its taking up, the right of such boat or other property will vest in the taker-up; but if the value exceeds five dollars, and the owner does not so appear and prove within two months, then the taker-up must deliver the property to any constable of the township, and take his receipt therefor; and the constable must proceed to advertise, sell, and pay over the money arising therefrom, as directed in the case of stray animals, in paragraphs 12 and 13 of this chapter.<sup>2</sup>

19. *On the shores of Lake Erie.* If the appraised value of any boat or craft, taken upon the shores of Lake Erie, do not exceed eight dollars, and no person appears and proves his right thereto, within said two months, such boat or craft, or other property, will belong to the person taking it up.<sup>2</sup>

20. *The clerks, justice, treasurer, and others mentioned in this chapter have other duties to perform in such cases,*<sup>3</sup> which are not given here, because only so much is stated here as will intelligibly show what are the constable's duties.

<sup>1</sup> § 14968.

<sup>2</sup> § 14969.

<sup>3</sup> §§ 14954-14965.

Among these provisions are the following, some of which apply to the constables, as well as to others:

SEC. 14972. If any person shall neglect to perform any of the duties required by this chapter, or shall do any thing contrary thereto, such person shall forfeit and pay a sum not exceeding one hundred dollars, nor less than one dollar, to be recovered by action before any court having cognizance thereof, and shall, moreover, be liable to the action of the party injured; and it is hereby made the duty of each township treasurer to sue for, and collect and pay over, all moneys arising by virtue of any forfeiture incurred as aforesaid.

SEC. 14973. All suits brought in behalf of the township, under the provisions of this chapter, shall be prosecuted by the treasurer thereof, in the name of the trustees of the township, any thing in this chapter to the contrary notwithstanding.

SEC. 14974. In every case, when any freeholders, or householders perform any services under the provisions of this chapter, they shall each be entitled to receive the sum of fifty cents for each day they may be actually employed, to be paid at the time of service, by the person or persons taking up such stray or strays.



21. *Further, as to timber, saw-logs, ties, sawed lumber, staves, etc., adrift.* A later statute than the foregoing parts of this chapter<sup>1</sup> further provides that every person who takes up and secures and delivers to the owner thereof any saw-logs or trees prepared for the purpose of sale, or any cross or railroad ties, boards, planks, staves, heading, or other timber prepared for market, found adrift in the Ohio river and the rivers and creeks within the State of Ohio, may collect from the owner, before delivery, if required, as follows: For each saw-log or other log or tree prepared for sale, thirty inches or less in diameter, twenty-five cents, and for all others fifty cents each; for catching and securing oak logs that are not less than eighteen inches in diameter at the top and fifty feet or more in length, not exceeding seventy-five cents each; for each cross or railroad tie, six cents; for boards or planks, if caught in rafts or large bodies, fifty cents per thousand feet, board measure; for twenty thousand feet, or a less quantity, and over twenty thousand feet, twenty-five cents per thousand feet, board measure; but if the same be not in rafts, but loose and scattered, two dollars and fifty cents per thousand feet, board measure; and for staves and heading, three dollars per thousand for all such as are marketable. If the owner of any such property fail to pay the sums so chargeable thereon within sixty days from the day they are so taken up, they may be sold at the instance of the person to whom such charges are due, by a constable or the sheriff of the county, at public auction to the highest bidder, upon thirty days' notice posted on the front door of the court-house of the county in which the sale is to be made; and at the place of sale the officer making it must, from proceeds thereof, pay to the taker-up the sum to which he is so entitled, and retain the balance, after deducting his commissions (which are the same as upon sales under execution), for the use of the owners. If no person appears and establishes his right to such proceeds within one year after such sale, the officer must place them to the credit of the distributable school fund of his county, and report the amount thereof to the county auditor.<sup>2</sup>

<sup>1</sup> On June 1, 1883, "An act for the more effective protection of persons dealing in timber" was passed, which may be found in volume 88, Ohio Laws, p. 195, or in Glauque's Revised Statutes, §§ 10144-10150. This act relates chiefly to trade-marks for timber; but its section 6 is in substance as given in paragraph 21, above. It is no part of the chapter of the General Code relating to strays and drifts, and the references to that chapter in paragraph 22, and in others above, do not apply to paragraph 21.

<sup>2</sup> §§ 6233-6240; 80 v. 195, § 6.



## ABANDONED OR STOLEN PROPERTY.

22. *How disposed of.* Whenever any property abandoned, stolen, or supposed to have been stolen, comes into the possession of any constable or other person, except a policeman or city marshal, and remains in the possession of said officer or person for a period of thirty days without being reclaimed by the owner, said property, if an animal, must be disposed of as provided in this chapter in regard to estrays; if other than an animal, it must be disposed of as provided in this chapter in regard to drifts.<sup>1</sup> (See note 1 on page 230.)

<sup>1</sup> § 14975.

## CHAPTER 36.

ELECTIONS, AND MINISTERIAL OFFICERS' DUTIES  
RELATING THERETO.

1. *Township election notice issues to constable.* At least twenty days before the annual township meeting, the trustees must issue their warrant to a constable of the township, directing him to notify the electors of such township to assemble at the time and place appointed for the annual meeting. Said warrant must enumerate the officers to be chosen at such meeting.<sup>1</sup>

2. *How such notice served.* The constable who receives such warrant must notify the electors of the township, *by setting up copies* of such warrant in at least three public places in such township, at least ten days before the meeting of the electors.<sup>2</sup>

3-7. *Form of constables copy of such notice :*

## NOTICE OF ELECTION.

To A. B., constable of Bartlow township, Henry county, Ohio:

You are hereby directed to notify the electors of said township to assemble at —, in the village of Deshler, in said township, on the — day of April, 19—, between the hours of six A. M. and six P. M., for the purpose of choosing the following officers of said township, to wit:

[Here are mentioned the township officers to be elected.]

S. T.,

U. V.,

W. X.,

Attest:

Trustees of said Township.

Y. Z., Clerk of said Township.

I certify the above to be a true copy of the warrant of election issued to me on the — day of March, 19—.

A. B., Constable of Bartlow Township.

<sup>1</sup> § 4832.

On application of two or more freeholders of the township, for that purpose, the trustees must insert in said warrant such other business, matter, or thing, as may be proposed to be submitted to said township meeting. § 4832.

<sup>2</sup> § 4833.

Where the office of one or more of the trustees is vacant, the township, clerk, together with the trustee or trustees in office, must issue said warrant. § 4833.

8. The township trustees, at every election or township meeting, have power to cause any disorderly person to be removed, and, if necessary, confined until the close of such election, or meeting; and every constable present must obey their orders and directions, for the purpose of preserving order at such meeting.<sup>1</sup>

9. *Notice to township officers elected or appointed.* The township clerk must, at once, after the election or appointment of township officers, make out a list of all the officers elected or appointed, stating the offices to which they are respectively chosen or appointed, and add thereto a requisition that they severally appear before him or some other officer authorized to administer oaths, and take the oath of office and give bond (if required by law to give bond) within ten days after such election.<sup>2</sup>

10. *Constable must serve such notice; how.* The said clerk must at once make service of such list and requisition by delivering to each person so elected or appointed a copy thereof; or, such list may be delivered to any constable of said township, who must make such service thereof; and said list and requisition, with the time and manner of service thereon, must be returned and filed in the office of said clerk.<sup>2</sup>

11-16. *This list of township officers elected may be as follows:* The State of Ohio, — county, — township, ss.

To any constable of said township, greeting:

The following is a list of the officers of said township, elected on Monday, the — day of April, A. D. 18—, showing the names of the persons chosen, and to what offices, respectively, to wit:

C. D. was elected township clerk; E. F. was elected township treasurer; G. H., I. J., and K. L. were elected township trustees; N. O. and P. Q. were elected constables; R. S., T. U., and V. W. were elected assessors; X. Y., Z. A., B. C., D. E., F. G., H. I., and J. K. were elected supervisors of roads for the [*state what*] districts respectively.

You are hereby directed to notify, forthwith, each of the above named persons of his election as aforesaid, by delivering to them each a certified copy hereof, and that they are severally required to appear, within ten days after said election, before me, or some other officer authorized to administer oaths, and take the oath of office, and give bond, as required by law. You will then at once return this list to me, with a statement thereon of the time and manner of the service thereof.

Done at my office in said township, this — day of —, A. D. 19—. L. M., Township Clerk.

17. *Constable's certificate on copies delivered.* The constable

<sup>1</sup> § 3280.

<sup>2</sup> § 3263.

should make a certificate, substantially as follows, on each copy of this list he delivers to any officer elected or appointed.

18-19.—

I certify the within to be a true copy of the original list received by me from the township clerk.

A. B., Constable.

20. *As to the return of the original list to the township clerk.* As already stated in paragraph 10, above, the constable must return the list which the township clerk gives to him, to that officer, first making a statement on the list as to how and when he made the required service of such list.

21-23. *Form of statement on the original list:*

On the — day of April, 18—, I notified the within named C. D., E. F., G. H., I. J., K. L., N. O., P. Q., R. S., T. U., V. W., X. Y., Z. A., B. C., D. E., F. G., H. I., and J. K., of their election, as within mentioned, by delivering to each a certified copy of this list.

Dated April —, 19—.

A. B., Constable.

24. If these persons were not all served on the same day, the statement must specify on what days each person was served, as follows:

25.—

On the — day of April I notified the within named A. B., C. D., E. F. [*naming all served on that day*], and on the — day of April I notified the within named G. H., I. J., L. N. [*naming all served on that day; and thus specify what was done each day*] of their election [*and finish as in the preceding form*].

26. *Duty of registrars, judges, and peace officers, etc., to preserve order at.* It is, of course, as much the duty of all officers having police power at the places of holding elections to preserve order and to cause the laws to be obeyed at times of holding elections as at any other time; and it is especially enjoined on the police of cities, in various sections of the statutes, to preserve order, to protect voters, etc., thereat.<sup>1</sup>

<sup>1</sup> § 4887.



## CHAPTER 37.

## DEPOSITIONS—POWERS AND DUTIES OF CONSTABLES AND OTHERS CONCERNING THEM.

1. *Before whom depositions taken; constables, etc., must obey.* As constables, marshals, and certain other officers must serve writs issued to them by officers authorized to take depositions, as will further appear below in this chapter, and as they should know whom so to obey, it is here stated that depositions may be taken in this state before a judge or the clerk of the supreme court, a judge or clerk of the circuit court, a judge or clerk of the common pleas court, a probate judge, justice of the peace, notary public, mayor, master commissioner, official stenographer of any court in this state, or any person empowered by a special commission; but depositions taken in this state, to be used therein, must be taken by an officer or person whose authority is derived within the state. If to be used out of the state, they may be taken before a commissioner or officer who derives his authority from the state, district, or territory in which they are to be used.<sup>1</sup>

2. *How attendance of witness secured; subpoena.* Probably in most instances arrangements are made with the witnesses to have them attend and testify without legal process.

3. When the attendance of a witness before an officer authorized to take depositions is required and is not so secured, a subpoena must be issued by that officer.<sup>2</sup>

4. *The form of the subpoena* is so much like the one given in paragraphs 13-17 of Chapter 7, that it need not be repeated here.

5. *By whom served.* The subpoena may be served by the

<sup>1</sup> §§ 11529, 11530.

<sup>2</sup> § 11502.

But a witness can not be compelled to go out of the county where he resides, or may be subpoenaed, to give his deposition; nor can he be compelled to testify till he is paid his mileage and fees for one day's attendance. See more fully, §§ 11506-11509.

The Cuyahoga Common Pleas Court, 1879, decided that a notary has no power to issue a subpoena *duces tecum*, and can not commit a witness for contempt for refusing to produce books, papers, etc. See 4 Bull. 457; 3 Bates' Dig. 437; Clev. Rep. 210.

sheriff, the coroner, any constable of the county, by the party, or by any other person.<sup>1</sup>

6. *How served; return as to.* The subpoena is served by either reading, or by copy delivered to witness, or left at his usual place of residence; but the *copy* need not contain the name of any other witness.<sup>2</sup> On the back of each *copy* the officer or person serving should certify as directed in paragraph 13 of Chapter 5; and on the *original* subpoena he should make a return such as directed in paragraphs 26-34 of Chapter 7. See also paragraph 7 of Chapter 5 as to original writs.

7. *Effect of disobedience by witness, generally.* A witness, duly subpoenaed, may render himself liable to punishment concerning which a ministerial officer may have duties to perform, in two ways, each of which will be considered separately below. *First.* By neglecting or refusing to appear at the time and place of testifying, as commanded by the subpoena. However, a witness need not, generally, attend to give his deposition out of the county where he resides, or the county in which the subpoena was served upon him.<sup>3</sup> *Second.* By refusing to be sworn, to answer or sign the deposition, if he does so appear. But a witness may demand his traveling fees, and fee for one day's attendance, before he is sworn; and, if not paid, he is not bound to testify. If he attends the second day of taking depositions, he may demand his fees also for that day before testifying.<sup>4</sup>

8. *First. Witness not appearing, may be attached.* When a witness fails, without lawful excuse, to attend in obedience to a subpoena, he may be punished for a contempt of the officer who issued the subpoena, as further shown in paragraphs 20-24, below; and the officer before whom his attendance is required may issue an attachment to the sheriff, coroner, or a constable of the county, commanding him to arrest and bring the person therein named before such court or officer, at a time and place to be fixed in the attachment, to give his testimony, and answer for the contempt.<sup>5</sup>

9. *As to requisites and form of writ of attachment.* This writ of attachment must be under the seal of the officer issuing it, if he have an official seal, and must specify particularly the cause of the arrest.<sup>6</sup> Its form will be, in a general way, like the one given in paragraphs 2-7 of Chapter 10.

<sup>1</sup> § 11504.

When a subpoena is not served by the sheriff, coroner, or constable, proof of service must be shown by affidavit, but costs of such service can not be taxed. § 11504.

<sup>2</sup> § 11505.

It seems that the law does not permit a subpoena concerning depositions to be served by *stating its contents* to the witness. Compare paragraph 6, above, with paragraph 6 of Chapter 7, and also the returns in these chapters.

<sup>3</sup> See note 2, page 235.

<sup>4</sup> § 11508.

<sup>5</sup> § 11511.

<sup>6</sup> § 11515.

10. *Bond for appearance of witness.* If the attachment is not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking, with surety, for his appearance, which sum must be indorsed on the back of the attachment, and if no sum is so fixed and indorsed, it must be one hundred dollars.<sup>1</sup>

11-15. *Form of such undertaking:*  
The State of Ohio, — county, ss.

Whereas, E. F., by process of attachment issued by Richard Roe, a notary public in and for said county, has been arrested as well to answer the State of Ohio, on the — day of —, A. D. 19—, at — o'clock A. M. [or, P. M.], before Richard Roe, a notary public in and for said county, at his office [or *state where*], for a contempt by him, the said E. F., committed, as is alleged, in disobeying a subpoena issued by said notary, and duly served upon him, as also to then give his testimony, by deposition, in an action pending in the court of common pleas of Henry county, Ohio, wherein E. F. is plaintiff and G. H. is defendant [*etc., as the facts may be*].

Now, therefore, we, the said E. F., and L. M. and S. N., his sureties, do hereby, in pursuance of the statute in such case made and provided, promise and undertake, if the said E. F. shall not personally appear before said Richard Roe, at the time and place designated by said writ of attachment, as above mentioned, to give his testimony and answer for said contempt, that we will pay the State of Ohio the sum of [*if no sum be indorsed on the attachment, insert one hundred*] dollars.

Done this — day of —, A. D. 19—.

E. F.,  
L. M.,  
S. N.

16-20. *Form of return to the attachment, if no bond is given:*

May —, 19—. I have the body of the within named Q. R. [or, the within named Q. R. not found in my jurisdiction].

A. B., Constable.

[*Give items of fees.*]

*Form of same, if bond is given:*

May —, 19—. I attached the body of the within named Q. R. who, with L. M. and S. N., his sureties, gave the undertaking for his appearance, etc., herewith returned; whereupon I discharged said Q. R. from custody.

[*Items of fees.*]

A. B., Constable.

21. *Rule to show cause.* If the witness was not served personally with the subpoena, the court may, by a writ called a rule order him to show cause why an attachment should not issue against him.<sup>2</sup> Such a writ is similar in many re-

<sup>1</sup> § 11511.

<sup>2</sup> § 11511.



spects to the order of attachment in paragraphs 2-7 of Chapter 10, and it must be served in much the same way.

22. *Second. Witness refusing to answer, etc., may be fined or imprisoned.* If the witness refuses to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, he may be punished, as for a contempt of the officer by whom his testimony is required,<sup>1</sup> by being fined by that officer in a sum not exceeding fifty nor less than five dollars, or by being imprisoned in the county jail until he submit to be sworn, testify, or give his deposition.<sup>2</sup>

23. *The order of commitment to prison* in such case may be directed to the sheriff, coroner, or any constable of the county where such witness resides or is at the time; and must be under the seal of the officer, if he have an official seal, and must specify particularly the cause of commitment; and if it be for refusing to answer a question, such question must be stated in the order.<sup>3</sup>

24. Since the law gives the magistrate or notary power to commit the witness for contempt, this is one of the matters over which he has jurisdiction, and in which the ministerial officer must obey the writ of commitment, even if it specify but incompletely the cause of commitment and the question required by the preceding paragraph to be specified. The principles stated in paragraphs 26-28 of Chapter 5; 12-23, Chapter 22; and 3, 4, of Chapter 25, would govern here also.

25. *How order executed.* The order of commitment must be executed by arresting the witness and committing him to the jail of the county, and delivering a copy of the order to the jailer.<sup>4</sup>

26. *The form of the order of commitment* will be similar to the form in paragraphs 10-16 of Chapter 27, except that its "Whereas," or first part, will probably be longer, to specify the cause of commitment, etc., as required by paragraph 23, above.

27. *Certificate on copy of writ left with jailer.* Having conveyed the witness to the jail, the constable must deliver him to the jailer, and at the same time deliver to the jailer a copy of the original order of commitment, on which

<sup>1</sup> § 11510.

A notary is such an officer, and may punish for such contempt. *De Camp v. Archibald*, 50 O. S. 618.

The general rule seems to be that the power of notaries to commit witnesses for contempt is wholly statutory, and it being a power in derogation of the rights of citizens, will be strictly construed. Ex parte Malinkrodt, 20 Mo. 493; Ramsey v. Foy, 10 Ind. 493; Melody v. Reab, 4 Mass. 473; Roseuplaenter v. Roessle, 54 N. Y. 262; Pike v. Jenkins, 12 N. H. 261; Benton v. Wiekwire, 54 N. Y. 226; Rue v. Alter, 5 Denio, 119.

A witness is not bound to answer any question that will directly or indirectly criminate himself, and he has the right to determine for himself whether the answer will have that effect. *Warner v. Lucas*, 10 Ohio, 336.

<sup>2</sup> § 11512.

<sup>3</sup> § 11516.

<sup>4</sup> § 11516.



copy the constable must make a certificate substantially as follows:

May —, 19—. I certify that the within is a true copy of the original writ. A. B., Constable.

28-31. *Return on the original order of commitment.* The constable must then make a return substantially as follows on the *original* order of commitment, and deliver it to the officer from whom he received it:

May —, 19—. I executed this order by committing the within named Q. R. to the jail of — county, Ohio, and by delivering a certified copy of this order to the jailer thereof. A. B., Constable.

32-33. *Constable's fees in this writ:*

Service and return of commitment...	\$ .40
Copy of order of commitment.....	.25
Mileage, 15 miles.....	.90
Transportation of prisoner.....	.00
[Other items, if any.]	

Total .....	\$ .00
-------------	--------

34. The officer may retain the deposition until all lawful fees are paid. He may also tax the costs of the sheriff, or other officer, who serves the process, and the fees of the witnesses; and may also, if directed by the persons entitled to the fees, retain the deposition until the fees are paid.<sup>1</sup>

<sup>1</sup> §-11545. See also §§ 127, 134.

## CHAPTER 38.

RELEASE OF SURETIES OF CONSTABLE, MARSHAL,  
ETC.

1. *Sureties of township officers.* A surety of a constable, justice, or any township officer, may at any time notify the township trustees, by giving at least five days' notice, in writing, that he is unwilling to continue as surety for such officer, and will, at a time therein named, make application to said trustees to be released from further liability upon his bond. He must also give at least three days' notice in writing to such officer, of the time and place at which the application will be made.<sup>1</sup>

2. *Sureties of constable or marshal.* If a constable, or the marshal of a municipal corporation, neglect or refuse, on demand made for that purpose by a person entitled thereto, his agent or attorney, to pay all money received by him in his official capacity for the use of such person, a surety of such constable or marshal may give notice to the trustees of the township, or the council of the corporation, in which such constable or marshal resides, of his refusal or neglect to pay over money by him collected by virtue of his office, and that he is unwilling to continue as his surety.<sup>2</sup>

3. *Proceedings in such case.* The trustees or council, as the case may be, upon such notice being given, must immediately inform the constable or marshal, in writing, of the refusal of his surety to continue as such, and that he is required to give a new undertaking, conditioned according to law.<sup>3</sup>

4. *If such constable or marshal give such undertaking,* to the satisfaction of the trustees or council, within ten days after receiving such notice, the sureties upon the first undertaking will be released and exonerated from all further liability thereon.<sup>3</sup>

5. *If the constable or marshal fail to give a new undertaking* within ten days after having received such written notice, such failure must be deemed and taken as a resignation of his office, and the trustees or council must proceed to fill such vacancy as is provided in other cases.<sup>3</sup>

6. For other provisions as to such failure to pay moneys collected, see paragraphs 37-43, Chapter 3.

<sup>1</sup> § 12203.<sup>2</sup> § 12198.<sup>3</sup> § 12199.

## CHAPTER 39.

## FEES AND COSTS.

## IN CIVIL CASES AND GENERALLY.

1. *Fees of constables.* Constables duly elected and qualified are entitled to receive the following fees for services rendered: For service and return of copies, orders of arrest, warrant, attachment, garnishee, writ of replevin, or mittimus, forty cents, each, for each person named in the writ; for service and return of summons, twenty-five cents for each person named in the writ; for service and return of subpoena, twenty-five cents for one person; for service on each additional person named in subpoena, ten cents; for service of execution on goods or body, forty cents; for all money made on execution, four per cent; for each day's attendance before justice of the peace, or jury trial, one dollar; for each day's attendance before justice of the peace, on criminal trial, one dollar; for each day's attendance before justice of the peace in forcible detainer, without jury, one dollar; for summoning jury, one dollar; for mileage, twenty cents for the first mile, and five cents per mile for each additional mile; for assistants in criminal causes, one dollar and fifty cents per day, each; for transporting and sustaining prisoners, allowance made by the magistrate, and paid on his certificate; for serving all other writs or notices not herein named, forty cents, and mileage as in other cases; for copies of all writs, notices, orders, or affidavits served, twenty-five cents; for summoning and swearing appraisers in case of replevin and attachment, one dollar in each case; advertising property for sale on execution, forty cents; for taking bond in replevin, and all other cases, fifty cents; for each day's attendance on the grand jury, two dollars.<sup>1</sup>

2. *Extra allowance on execution, attachment, and in replevin, etc.* In addition to the fees now allowed by law to constables and other officers, upon executions, attachments, and in replevin, the court to which an execution, order for the delivery of property in replevin, or order of attachment is returnable, must allow the officer making return thereof, a reasonable compensation for any extraordinary trouble or

<sup>1</sup> §§ 3347, 4387, 8017.

expense incurred by him, in the removal or preservation of any personal property levied on under said writ or order, which amount, when so allowed, must be taxed in the cost; but such officer can not in any case be allowed more than one dollar per day, each, for the services of the person or persons employed in the removal or taking care of said property; and no allowance can be made, unless it appears to the court that the extraordinary services for which such allowance is asked, were necessary for the proper execution of such writ.<sup>1</sup>

3. *Fees for writing advertisement.* When an officer, in the due execution of his office, is required to write or set up an advertisement, he must be allowed for every such advertisement, twenty-five cents; and if the advertisement is required to be published in a newspaper, the officer must be allowed twelve and a half cents in addition to the price thereof, to be taxed in the bill of costs; but constables can not be allowed more than twenty-five cents for advertising the sale of property taken in execution.<sup>2</sup>

4. *Fees of officers attending examining court.* Sheriffs, constables, marshals and their deputies, and watchmen, when required by an examining court to take charge of the defendant or defendants, during the examination of such defendant or defendants upon any charge for the commission of a crime or offense against the laws of this state, must be allowed the sum of seventy-five cents for rendering the service so required of them. This sum must be taxed and paid in the same manner that the other fees of such officers are taxed and paid in the same or like cases; but such officers will not be entitled to receive fees for testifying upon such examinations, when acting as the officers of such examining courts.<sup>3</sup>

5. *Some miscellaneous fees.* Constables, marshals, and other officers or persons who take up animals unlawfully at large, are also allowed fees as fully set forth in paragraph 6 of Chapter 35; for feeding, watering, and caring for certain animals, fees as stated in paragraph 15 of Chapter 34; for serving coroner's writs, as stated in paragraphs 20-25 of Chapter 40; for taking up strays or drifts, and for some other miscellaneous matters, fees as stated in the table at the close of this chapter.

6. *Constable's fees for advertising township elections, etc.* The constable who advertises the time of holding elections and notifies the township officers of their election, must be allowed a reasonable compensation therefor, to be fixed by the trustees, and paid out of the township treasury.<sup>4</sup>

7. *Items of fees to be returned on process.* No sheriff, coroner, or constable is entitled to receive, either on mesne or final process, any fees, unless he return, upon the process

<sup>1</sup> § 3009.<sup>2</sup> § 3005.<sup>3</sup> § 3010.<sup>4</sup> § 3346.



upon which any charge shall have been made, the particular items of such charge.<sup>1</sup>

8. *Itemized bill of costs must be furnished if demanded.* In all cases when demanded by any person liable to pay any fees or costs to any officer, it is the duty of such officer, without charge, to make out, sign and deliver to such person, an itemized bill of such fees or costs; and no person can be compelled, after such demand, to pay such fees or costs until such itemized bill is so made and delivered, with a receipt for the fees and costs paid.<sup>2</sup>

9. *Penalties for overcharging.* Severe penalties are prescribed for charging other or greater fees than the law allows, as may be seen more fully in paragraph 3 of Chapter 33.

10. *Entitled only to fees specified by law.* An officer whose fees are regulated by statute can charge fees for those services only to which compensation is by law attached.<sup>3</sup>

11. *Appraisers' fees.* Persons called by an officer to appraise real or personal property on execution, replevin, or attachment, or to fix the value of exempted property, are entitled to receive one dollar per day, except as otherwise specially provided and commissioned to make partition, to assign dower; two dollars each day and if laid in more than one county two dollars and a half per day.<sup>4</sup>

## COSTS IN CRIMINAL CASES, HOW COLLECTED, ETC.; ALLOWANCE FOR, BY COUNTY, ETC.

12. *When security for costs may be required.* When the offense charged is a misdemeanor, the magistrate may, before issuing the warrant, require the complainant to become bound for the costs, or, if he considers the complainant wholly irresponsible, that he procure some other person to become bound for the costs, in case the complaint be dismissed; but no such bond can be required of constable, marshal, or other ministerial officer when in the discharge of his official duties.<sup>5</sup> No such security can be required when the offense charged is a felony.

13. *Magistrate to tax costs against accused, when.* In all causes in which a justice of the peace has power to fine a person charged with the commission of an offense, such justice must render judgment for such fine, and tax such costs, for himself, the constable, and witnesses, as are allowed by law.<sup>6</sup>

14. *May collect same; how.* The magistrate may issue execution on such judgment, with costs taxed against the offender, to be levied on his personal property, and for want

<sup>1</sup> § 3038.

<sup>2</sup> § 3039.

<sup>3</sup> *Debolt v. Trustees Cincinnati Tp.*, 7 O. S. 237.

<sup>4</sup> § 3006.

<sup>5</sup> § 13499.

<sup>6</sup> § 3022.

thereof, upon the body of such offender. On this execution the officer may pursue the offender and arrest him in any county in the state, and convey and commit him to the jail of the county whence the execution issued, where he must remain until the fine and costs are paid or secured to be paid, or he is otherwise discharged according to law.<sup>1</sup>

15. *Will be paid by county, when.* When a defendant is convicted of a felony, the costs of the magistrate, constable, marshal, and witnesses are paid out of the county treasury.<sup>2</sup> In no other case will any such costs be paid by the state or county to any of said officers.<sup>3</sup> But in some cases certain allowances will be made as follows:

16. The county commissioners may, at any regular session, make an allowance to any of said officers in lieu of fees, in causes of felonies wherein the state fails, and in misdemeanors, wherein the defendant proves insolvent; but the aggregate amount of such allowances to an officer in any year can not exceed the fees legally taxed to him in such causes, nor can the aggregate amount allowed to an officer in any year exceed one hundred dollars.<sup>4</sup>

17. *Expense of pursuing felon.* The county commissioners may allow and pay any necessary expense incurred by an officer in the pursuit of a person charged with a felony, who has fled the country, in addition to the allowance provided for in the preceding paragraph.<sup>5</sup>

18. *How allowance made.* In ascertaining the amount of fees taxed by any magistrate, with a view to making him the allowance hereinbefore mentioned, it must be made to appear in cases where such officer was authorized to take security for costs, that he has exercised reasonable care in taking such security, and until satisfied by the certificate of such magistrate, before whom such causes were heard, or other proof to the satisfaction of the commissioners, that the prosecuting witness was indigent, and entirely unable to pay the costs or procure security for the payment of the same, and that the officer exercised due care in taking such security; the officer's fees in such causes shall not be in-

<sup>1</sup> §§ 13718, 13719.

<sup>2</sup> § 3016. As to meaning of felony, etc., par. 33 of Chapter 22.

<sup>3</sup> § 3017.

<sup>4</sup> § 3019.

All fees due the above named officers in cases of misdemeanor must be paid into the county treasury when collected, unless it be ascertained that the amount of such fees was not allowed for as above mentioned. §§ 3021, 3023.

<sup>5</sup> § 3015.

But there must be, before the pursuit, a legal charge or complaint made to a proper officer or court, and not a mere intention to commence a prosecution in case the offender be apprehended. W. 176. Proof satisfactory to the commissioners of the county that the services have been rendered, and that the charges are reasonable, is also generally required.

cluded in ascertaining the amount so to be allowed.<sup>1</sup> And the same rule is generally followed as to constables' and marshals' costs.

19. Where such officer takes security for costs that is insufficient at the time of taking the same, the commissioners can not take into account his fees in such case, in making an allowance therein to him.<sup>2</sup>

20. Where a recognizance, given in a case of felony, is collected, the county commissioners may, out of the amount paid into the county treasury, pay any or all the expenses incurred by any person in procuring the arrest of the accused, in addition to the fees allowed by law.<sup>3</sup>

21. *As to rewards for arrest, etc., of criminals.* The county commissioners may offer rewards for detecting or arresting any person charged with or convicted of a felony, and pay the same and all other necessary expenses not otherwise provided by law incurred in so doing, when such person is convicted. They may also offer such rewards for the detection or apprehension of any person charged with or engaged in horse-stealing, or aiding or abetting the same, and upon conviction of such person, pay such reward, or other compensation; but not to the owner of a stolen horse.<sup>4</sup>

#### TABLE OF FEES.

22 For convenience of reference, all fees which constables, marshals, and similar ministerial officers may receive, are tabulated as follows:

23. *Fees in civil cases: (See par. 1, this chapter.)*

Summons—service and return of, each person named in the writ.....	.25
Subpena—service and return of, for one person.....	.25
Each additional person named in the writ.....	.10
Service and return of copies, orders of arrest, warrant, attachment, garnishee, writ of replevin, mittimus, or commitment, each, for each person named in the writ.....	.40
Execution—service of, on goods or body.....	.40
Execution—all money made thereon, 4 percent thereof.	
Service of all other writs and notices not mentioned, each.....	.40
Making copies of all writs, notices, orders, or affidavits served, each.....	.25
Writing and setting up every advertisement (see par. 3).	.25
Advertising property for sale on execution (see pars. 1, 3).....	.25 or .40
Publishing any advertisement in newspapers, each, actual cost and.....	.12½

<sup>1</sup> § 3020.

<sup>2</sup> § 3021.

<sup>3</sup> § 2487.

<sup>4</sup> §§ 2489, 2490.



Taking bond in replevin and other cases, each.....	.50
Mileage in conveying lunatic to asylum, each mile, each way.....	.10
Mileage in all other cases, first mile.....	.20
Each additional mile.....	.05
Summoning jury.....	1.00
Attendance before justice, or jury trial, each day.....	1.00
Attendance before justice in forcible detainer, without jury, each day.....	1.00
Summoning and swearing appraisers in replevin or attachment, each case.....	1.00
Removing and caring for goods, live stock, etc., in execution, attachment, replevin, etc., such reasonable compensation, not to exceed \$1.00 per day for assistants, as the justice will allow. (See par. 2.)	
Strays and drifts, advertising and selling (see pars. 11, 13, 18, Chap. 35.....	1.00
Same, in some cases, 4 per cent of proceeds. (Par. 20, Chap. 35.)	
Advertising township elections and notifying township officers of their election, reasonable compensation, to be allowed by township trustees. (Par. 6.)	
24. <i>Fees in criminal cases:</i> (See par. 1.)	
Service and return of warrant, or attachment of any kind, mittimus, or commitment, each person named.....	.40
Subpena for one person.....	.25
Each additional person named.....	.10
Execution—service of, on goods or body (for fine and costs, etc.)....	.40
Execution—money made on, 4 per cent thereof.	
Advertising property for sale on execution (see pars. 1-3).....	.25 or .40
Making copies of all writs, notices, orders, or affidavits served, each.....	.25
Mileage in all cases, first mile.....	.20
Each additional mile.....	.05
Service and return of all other writs or notices, each..	.40
Attending trial before justice of the peace, each day..	1.00
Attending grand jury, each day.....	2.00
Assistants, each, per day.....	1.50
For taking charge of defendant or defendants, during examination thereof, when required so to do by the magistrate (see par. 4).....	.75
Pursuing prisoner out of county. (See par. 17.)	
Transporting and sustaining prisoners, allowance made by the magistrate, and paid on his certificate. (See par. 17.)	



25. *Miscellaneous fees—*

*As taker-up of animals unlawfully running at large—*

For taking up each animal of the horse or mule kind.	1.00
for taking up each head of neat cattle (cows, etc.) (see par. 6, Chap. 35.)	.75
For taking up each swine	.50
For taking up each sheep or goose	.25
For taking up boat, scow, etc., adrift, reasonable compensation allowed by justice of the peace. (See par. 17, Chap. 35.)	
For taking up saw logs, ties, lumber, etc., adrift, 4 per cent. (See par. 20, Chap. 35.)	
For arresting paroled convict. (See par. 27, Chap. 3.)	
For transporting prisoner to work-house. (See par. 69, Chap. 28.)	
For transporting infant to house of refuge. (§ 2087.)	
Feeding, watering, etc., certain suffering animals, reasonable costs, to be collected from owner. (See par. 8, Chap. 34.)	

26. *Fees of special constables :*

Generally, same fees as other constables.

To guard certain private property, reasonable pay, by owners of property (§§ 1738, 1739).

On Lake Erie islands, per day (§ 13428)	2.00
Of court constables. (See par. 42, Chap. 1.)	

## CHAPTER 40.

## MISCELLANEOUS PROVISIONS.

1. *Qualifications of sureties on bonds, etc.* Sureties must be residents of this state, and worth, in the aggregate, double the sum to be secured, beyond the amount of their debts, and have property liable to execution in this state equal to the sum to be secured.<sup>1</sup>

2. *Justification of sureties; effect of.* An officer, authorized by law to approve a surety, may require such person to testify, orally or in writing, touching his sufficiency; but this will not, in itself, exonerate the officer in an action for taking insufficient surety.<sup>2</sup>

3. An affidavit in the following form is generally taken from each proposed surety, when such testimony is wanted. Such affidavits should be attached to the bond, and filed with it, among the papers of the case.

4-7. *Form of affidavit of surety (to justify bail)*—  
State of Ohio, ——— county.

E. F.	}	Before C. D., a justice of the peace in and for —— township of said county.
vs.		
G. H.		

The undersigned O. M., proposed surety on the indemnifying bond [*or state what paper, etc., as the facts require*] in the above stated case, being duly sworn, says that he is a resident of the above named county; that he is worth, beyond the amount of his debts, at least [*here name a sum double the amount to be secured*] dollars; and that he has property liable to execution in the State of Ohio, amounting in actual value at least to the sum of [*here insert an amount not less than that of the proposed recognizance or undertaking*] dollars, beyond the amount of all his debts and liabilities. O. M.

Sworn to and subscribed before me, this ——— day of ———, 19——.

A. B., Constable.

8. *Bond and undertaking* as generally used in the statutes mean the same thing, the one including the other.<sup>3</sup>

9. *Facts applicable to indemnifying, re-delivery, replevin, and other bonds.* Official bonds, and all bonds required or authorized to be taken by or before any public officer, judicial or ministerial, and all bonds of indemnity, bind and render liable thereon all who sign them, whether, at the time of

<sup>1</sup> § 10219.

<sup>2</sup> § 10218.

<sup>3</sup> §§ 27, 10213.

the signing, the amounts of such bonds be filled in or left in blank, *if* such amounts be filled in before, or at the time of the approval or acceptance of such bond, and such filling in may be done in the absence of any or all of said signers, and without any express authority for that purpose from them or any of them.<sup>1</sup>

10. *As to seals on written instruments, writs, etc.* Wherever an official or a corporate seal is required to be affixed to any instrument of writing, an impression of such seal upon either wax, wafer, or other adhesive substance, or upon the paper or material on which such instrument is written, is sufficient. *Private* seals are abolished.<sup>2</sup> Therefore, when an officer who has a seal, or when a corporation signs an instrument, they should use a *seal* also. But when an *individual* signs a bond, deed, or other paper, a seal is unnecessary. As to seals on writs, see paragraph 4, Chapter 3.

11. *Arrest of certain violators of bridge laws.* A constable of any township, or the marshal of any city or village, may arrest upon view, and without any process, any person driving on or over any bridge designated below faster than a walk, or driving on or over such bridge at any one time a greater number of cattle or horses than twenty head. This applies only to free county bridges, at each end of which the county commissioners have had conspicuously placed notices painted in large letters forbidding such riding or driving.<sup>3</sup>

12. *Arrest of persons intending to engage in prize-fight.* When a sheriff, constable, marshal, or other police officer, has reason to believe that any person in his bailiwick is about to engage as principal or second in any premeditated fight or contention, commonly called a prize-fight, or is in training or preparation to engage as principal in such fight, he must forthwith arrest such person and take him before a judge of the court of common pleas, justice of the peace, mayor, or police judge, and give notice to the prosecuting attorney, who must immediately attend before such officer, and, upon the proper affidavit being filed, prosecute the complaint.<sup>4</sup>

13. *Constables' duties as to apprentices, or children "bound out."* There are statutory provisions as to binding out, or apprenticing, by parents, guardians, and certain public institutions, during minority or otherwise, of certain children under their charge. Among these provisions are some relating to the adjustment of disputes between the parties to such apprenticeships, or to the punishment of cruel treatment of such children, and which authorize the justice of the peace to summon the person to whom any such child has been bound, to appear forthwith before him.<sup>5</sup>

<sup>1</sup> § 5.<sup>2</sup> § 32.<sup>3</sup> §§ 7572, 7573.<sup>4</sup> § 13474.<sup>5</sup> § 8013.

14. *The form* of this summons will be so nearly like that given in Chapter 6 that none need be given here.

15. *The service* of such summons will be the same as directed in Chapter 6.

16. In such cases, the justice may also issue a venire to any constable of the township to summon five disinterested freeholders therein, named, to meet at a certain time and place mentioned in the venire.<sup>1</sup>

17. *The form of such venire* will be so nearly like that given in paragraphs 2-5 of Chapter 8 that no further form need be given here.

18. *The service and return of such venire and constable's duties as to the jury* will be the same as directed in said Chapter 8.

18a. *Constable's duties as to dependent or delinquent children:*

It is provided that where a minor under eighteen years is taken before a justice of the peace, it shall be the duty of such justice of the peace to transfer the case to a judge of the juvenile court, and the officer having such child in charge shall take it before such judge.<sup>2</sup>

19. *Constable's duties as to inquests on dead bodies.* The coroner may issue any writ required by the chapter of the General Code relating to sheriff and coroner, to any constable of the county in which the body of a person whose death is supposed to have been caused by violence is found, and every constable who fails to execute any warrant to him directed, is liable to a fine of twenty-five dollars, to be recovered upon the complaint of the coroner, before any court having jurisdiction thereof.<sup>3</sup>

20. *His fee therefor.* The law provides that the constable, "for services rendered," shall be paid his fees;<sup>4</sup> and he is as much entitled to these when serving writs for the coroner as for the justice or any other officer.

21. The expenses of coroner's inquests are paid by the county; and the coroner should issue to the constable an order or certificate, on the county auditor, for said fees, substantially as follows:

22-25. *Form of certificate to county auditor for constable's fees—*

The State of Ohio, — county, ss.

To the auditor of said county:

This is to certify that A. B. is entitled to receive — dollars, — cents, for attendance as constable at Coroner's Inquest No. —, held by me as coroner in said county, beginning on — day of —, 19—, in the case of — deceased, payable out of the county treasury, as provided by law (§§ 2858, 3347), the items being as follows:

<sup>1</sup> §§ 8014, 8015.

<sup>2</sup> § 1659.

<sup>3</sup> § 2858.

<sup>4</sup> § 3347.



Service and return of subpoena for 5 persons.....\$ .65  
 5 copies, 25 cents each..... 1.25  
 Mileage, 7 miles..... .50  
 [Give other items, if any].....

Total.....\$2.40

Given under my hand, this ——day of ——, A. D. 19—.  
 L. M., Coroner.

26. *As to revivors of judgments; constable's or marshal's duties as to.* The law provides how judgments obtained before justices and mayors, having become dormant, may be revived; also that the conditional order to revive, there provided for, shall be served and returned in the same time, and in the same manner, as in case of service of summons in actions before justices of the peace; also that in all cases wherein service may be made by publication, personal service may be made either within or without the state.<sup>1</sup>

27. *Duties in bastardy cases.* When any unmarried woman, who has been delivered of or is pregnant with a bastard child, makes complaint thereof in writing, under oath, before any justice of the peace, charging any person with being the father of such child, the justice must thereupon issue his warrant directed to any sheriff or constable of this state, commanding him to pursue and arrest such accused person in any county in this state, and bring him forthwith before said justice to answer such complaint.<sup>2</sup>

28-33. *Form of the warrant in such case:*

The State of Ohio, —— county, ss.

To any sheriff or constable of the State of Ohio, greeting

Whereas, E. F., an unmarried woman, resident of the county of ——, has this day made complaint on oath, and in writing to and before me, C. D., a justice of the peace in and for the township of ——, in said county [that on the —— day of ——, in the year ——, she was delivered of a bastard child; or, if the fact be so, that she is now pregnant of a bastard child], and that G. H. is the father of said child.

You are therefore commanded to pursue and arrest the said G. H. in any county in this state, and bring him forthwith before me to answer said complaint; and for so doing, this shall be your warrant.

Given under my hand this —— day of ——, A. D. 19—.

C. D., Justice of the Peace.

34. *The service and return* of this writ is the same as in case of an order of arrest, in Chapter 25.

<sup>1</sup> § 10444.

<sup>2</sup> § 12110.

35. *As to seizure, etc., of water-craft.* The statute provides that any steamboat or other water-craft [this includes canal-boats] navigating the waters within or bordering upon this state, shall be liable, and that such liability shall be a lien thereon, for all debts contracted on account thereof by the master, owner, steward, consignee, or other agent, for materials, supplies, or labor in the building, repairing, furnishing, or equipping of the same, or for insurance, or due for wharfage, and also for damages arising out of any contract for the transportation of goods or persons, or for injuries done to persons or property by such craft, or for any damage or injury done by the captain, mate, or other officer thereof, or by any person under the order or sanction of either of them, to any person who is a passenger or hand on such steamboat or other water-craft at the time of the infliction of such damage or injury.<sup>1</sup>

36. Further provision is made for the seizure by the sheriff, or by the constable, if the claim is within the jurisdiction of a justice of the peace, of such craft on a warrant of seizure to be issued to him by the proper court or magistrate, and of its release, if a proper undertaking therefor be executed; and other matters connected therewith are also provided for.<sup>2</sup>

37. But it is believed that the cases wherein the constable will be called on to act are so few, especially when it is borne in mind that the federal courts have exclusive jurisdiction of most matters of that kind, that a reference to the statutes concerning such seizures, is all that it is expedient to give here.<sup>3</sup>

<sup>1</sup> § 12088. See the many important notes to this section, in General Code.

<sup>2</sup> See, generally, §§ 12089-12092.

<sup>3</sup> See note 2 above. Also Swan's Treatise, Chap. 71, where full instructions and forms may be found.

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